TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 16

LEROY GRAHAM, ET AL., PETITIONERS,

vs.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 9, 1949.
CERTIORARI GRANTED JUNE 27, 1949.

SUPREME COURT OF THE UNITED STATES

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INDEX

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—3475

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 9716

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,

Appellant,

v.

LEROY GRAHAM, ET AL.,

Appellees

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

COMPLAINT FOR INJUNCTION, DAMAGES AND OTHER RELIEF

This action arises under U. S. Code, Title 28, Sections 41(8), 125 and 400, and Title 45, Sections 151 *et seq.*, commonly known as The Railway Labor Act.

For their complaint, plaintiffs allege that:

1: As more fully hereinafter set forth, plaintiffs are Negroes, citizens of the United States, who bring this action on their own behalf and on behalf of others similarly situated, to preserve and enforce their rights to employment on the defendant railroads and certain other Southeastern

carriers against the discriminatory practices of the defendants which have been declared unlawful by the Supreme Court of the United States.

2. The Negro firemen on whose behalf this action is brought are employed by the defendant railroads and carriers owned or controlled by them which are hereinafter designated, and such firemen are many hundred in number and it is therefore impracticable to bring them all before the Court. These are common questions of law and fact affecting the rights of these plaintiffs and those of the other Negro firemen on whose behalf this action is brought.

3. Defendant Southern Railway Company is a corporation operating as a common interstate carrier along the eastern seaboard. It is engaged in, and is doing regular, continuous and substantial business in the District of Columbia. The said Railway Company maintains extensive executive, business and operating offices and numerous employees, solicits passenger and freight business, operates trains and carries on other regular and substantial business activities, all within the District of Columbia.

4. Defendant Seaboard Air Line Railway Company is a corporation operating as a common interstate carrier along the eastern seaboard. It is engaged in and is doing regular, continuous and substantial business in the District of Columbia. The said Railway Company maintains offices and employees within the District for the solicitation and handling of freight and passenger business, for the supply and operation of dining car services on its trains; brings its passenger and freight cars into the District and carries on other regular and substantial business activities, all within the District of Columbia.

5. Defendant Atlantic Coast Line Railroad Company is a corporation operating as a common interstate carrier along the eastern seaboard. It is engaged in and is doing regular, continuous and substantial business in the District of Columbia. The said Railroad Company maintains offices and employees within the District for the solicitation and handling of freight and passenger business, for the supply and operation of dining car services on its trains; brings its passenger and freight cars into the District and carries

on other regular and substantial business activities, all within the District of Columbia.

6. At the times hereinafter mentioned, the defendant railroads and those railroads and terminal companies mentioned in Paragraphs 13, 14 and 15 of this complaint, together with certain other Southeastern Carriers, has designated the members of the Southeastern Carriers' Conference Committee to represent them in their collective bargaining with the defendant Brotherhood of Locomotive Firemen and Enginemen and in negotiating and executing the hereinafter mentioned agreement of February 18, 1941, a copy of which is annexed hereto and marked Exhibit A and made a part of this complaint as if fully set forth herein.

7. Defendant Brotherhood of Locomotive Firemen and Enginemen (hereinafter referred to as Brotherhood) is a national unincorporated association whose membership consists in chief part of the locomotive firemen and enginemen employed on various railroads engaged in interstate commerce including the defendant railroad companies and the other railroad companies mentioned herein. Brotherhood maintains offices in the District of Columbia at 10 Independence Avenue, S. W., in conjunction with the Railway Labor Executives Association, employs agents and acts as bargaining representative under the Railway Labor Act within the District of Columbia and is otherwise doing business regularly within the District of Columbia.

8. Defendant Brotherhood of Locomotive Firemen and Enginemen, Lodge No. 7, sometimes known as the "Potomac" Lodge, is a subordinate lodge of Brotherhood, composed principally of members of Brotherhood who reside in the District of Columbia, and maintains offices at 523 8th Street, N. E., Washington, D. C.

9. Defendant Brotherhood of Locomotive Firemen and Enginemen, Lodge No. 532, sometimes known as the "National Capitol" Lodge is a subordinate lodge of Brotherhood composed principally of members of Brotherhood who reside in the District of Columbia, and maintains offices at 523 8th Street, N. E., Washington, D. C.

10. Defendant Marven M. McQuade resides in the District of Columbia at 2231 Douglas Street, N. E. and is the

Recording Secretary and Financial Secretary of the defendant Lodge No. 7 and is sued herein as a representative of the members of the defendant Brotherhood and the defendant subordinate Lodges No. 7 and No. 532.

11. Defendant William E. Lacey resides in the District of Columbia at 611 Morris Place, N. E. and is the Recording Secretary of the defendant Lodge No. 532 and is sued herein as a representative of the members of the defendant Brotherhood and the defendant subordinate Lodges No. 7 and No. 532.

12. Upon information and belief, defendants subordinate Lodges No. 7 and No. 532 are all the lodges of defendant Brotherhood within the District of Columbia and are truly and fairly representatives of the other subordinate lodges of Brotherhood and of Brotherhood itself, and the interest of all the members, subordinate lodges and of the Brotherhood will be adequately represented in this action by the defendants. The defendants subordinate Lodges and the defendants McQuade and Lacey are sued as representatives of the membership of all the subordinate lodges and of the Brotherhood itself as a class under Rule 23(a) of the Federal Rules of Civil Procedure.

13. The Defendant Southern Railway Company, in addition to the railway lines which it operates directly, owns or controls other railroads and railroad terminals through stock ownership, lease or other arrangements and controls and determines or is in position to control and determine the policies of such other railroads, including their labor policies. The railroads and railroad terminals which the defendant Southern Railway Company so owns or controls are: State University Railroad Company, whose principal office is located in Washington, D. C.; Cincinnati, New Orleans and Texas Pacific Railway Company, whose principal office is located in Cincinnati, Ohio; Alabama Great Southern Railway Company, whose principal office is located in Birmingham, Alabama; Woodstock and Blockton Railway Company, whose principal office is located in Washington, D. C.; New Orleans and Northeastern Railway, whose principal office is located in New Orleans, Louisiana; New Orleans Terminal Company, whose principal office is located

in Washington, D. C.; Georgia Southern and Florida Railway Company, whose principal office is located in Macon, Georgia; St. Johns River Terminal Company, whose principal office is located in Washington, D. C.; Harriman and Northeastern Railway Company, whose principal office is located in Washington, D. C. and Cincinnati; Burnside and Cumberland River Railway Company, whose principal office is located in Washington, D. C.

14. The defendant Atlantic Coast Line Railroad Company, in addition to the railway lines which it operates directly, owns or controls other railroads and railroad terminals through stock ownership, lease or other arrangements and controls and determines or is in a position to control and determine the policies of such other railroads, including their labor policies. The railroads and railroad terminals which the defendant Atlantic Coast Line Railroad Company so owns or controls are Louisville and Nashville Railroad Company, whose principal office is located in Louisville, Kentucky; Atlanta and Westpoint Railroad Company, whose principal office is located in Atlanta, Georgia; Western Railway of Alabama and the Georgia Railroad, whose principal offices are located in Atlanta, Georgia.

15. The defendants Southern Railway Company, Atlantic Coast Line Railroad Company and Seaboard Airline Railway Company jointly own or control the following railroads and railroad terminals through stock ownership, lease or other arrangements and they jointly control and determine or are in a position jointly to control and determine the policies of those railroads and railroad terminals including their labor policies: Atlanta Terminal Company, whose principal office is located in Atlanta, Georgia; Norfolk and Portsmouth Beltline Railroad Company, whose principal office is located in Norfolk, Virginia; and the Jacksonville Terminal Company, whose principal office is located in Jacksonville, Florida.

16. Defendant Brotherhood by virtue of its constitution and by its practice restricts its membership to white locomotive firemen and enginemen and excludes Negro firemen from membership solely because they are Negroes.

17. Defendant Brotherhood members at all times herein mentioned constituted the majority of the craft or class of locomotive firemen on most of the interstate railroads of the United States including the defendant carriers and other railroads and terminal companies mentioned herein which are owned or controlled by them, and the defendant Brotherhood under and by virtue of the Railway Labor Act has acted as the sole bargaining agent and representative of the entire class or craft of locomotive firemen, including plaintiffs and others similarly situated. As such agent Brotherhood negotiated agreements with the defendant railroads and the other railroads and terminal companies herein mentioned as to rates of pay, rules and conditions of employment for all members of the said class or craft, including the agreement with the defendant railroads and the other Southeastern Carriers dated February 18, 1941, which is Exhibit A to this complaint.

18. For some years prior to the date of the execution of the aforesaid agreement, defendant railroads and the other Southeastern Carriers unlawfully conspired with defendant Brotherhood to advance the interests of the members of the Brotherhood and to eliminate Negro locomotive firemen from their lawful employment and to deprive them of their rights and property as herein alleged, and in furtherance of said conspiracy did enter into the aforesaid agreement of February 18, 1941 and into other unlawful and secret agreements and arrangements, written and oral, to accomplish the said unlawful purposes.

19. At the times herein mentioned, defendant Brotherhood in assuming the obligation to act and in acting as sole bargaining agent and representative under the Railway Labor Act did not fairly and equitably bargain or act for or on behalf of all members of the class or craft of locomotive firemen involved in negotiations between the Brotherhood and defendant railroads and the other railroads and terminal companies herein mentioned (sometimes hereinafter referred to as "Southeastern Carriers"); in so dealing with such railroads, the Brotherhood did not perform and failed to discharge its lawful duty, obligation and trust to protect equally the interests of all members of the craft.

Instead and in violation of the law, Brotherhood acted exclusively for the benefit and in the interest of its own membership and discriminated against these plaintiffs and other Negro locomotive firemen and deprived them of their right to work on fair and equal terms with white locomotive firemen and with members of the Brotherhood; and to that end defendant Brotherhood negotiated and consummated with the defendant railroads, and the other Southeastern Carriers a number of agreements, including the agreement of February 18, 1941, which is Exhibit A to this complaint, and which is sometimes known and herein referred to as the "Southeastern Carriers Agreement" or the "Washington Agreement."

20. The agreement of February 18, 1941, which is Exhibit A to the complaint, was executed in Washington, D. C. and on the same day became a Mediation Agreement in settlement of differences between the Brotherhood and the defendant railroads and the other Southeastern Carriers, consummated under the purported authority of the National Mediation Board and witnessed by two of the members of the said board. The Mediation Agreement was likewise executed in Washington, D. C. A copy of the said Mediation Agreement is annexed hereto, marked Exhibit B and made a part hereof as if fully set forth herein.

21. Under the provisions of the Washington Agreement the defendant Brotherhood reserved the right to press for further discriminatory restrictions upon the employment of Negro firemen by the carriers which were parties thereto. Pursuant to that provision the defendant Brotherhood and the Louisville and Nashville Railroad Company entered into a supplemental agreement on May 12, 1941 which further curtailed the seniority rights of Negro firemen and further limited their employment. Upon information and belief since February 18, 1941 the defendant Brotherhood and various of the Southeastern carriers entered into supplemental agreements, sometimes in writing and sometimes oral, and engaged in practices which extended the unlawful discriminatory employment provisions of the Washington Agreement.

22. The said agreements were intended to by the defendants and the other Southeastern Carriers and did operate to the serious injury of the plaintiffs and others similarly situated as herein more fully set forth.

23. Employment as locomotive firemen by defendant railroads and the other Southeastern Carriers and the seniority rights which attach to such employment are property rights of great importance to the firemen so employed, including the individual plaintiffs, and such employment constitutes plaintiffs' sole means of livelihood.

24. The agreement of February 18, 1941 makes provision for the terms of employment, including the rights of seniority, of "promotable" firemen and "non-promotable" firemen. The term "promotable firemen" refers to white firemen and Negro firemen are those referred to by the term "non-promotable firemen." The term "promotable" means eligible for promotion to the position of locomotive engineer. Negro firemen are by the practices and agreements of all defendants made ineligible for promotion to positions as locomotive engineers. Because these plaintiffs and other Negro firemen are "non-promotable," many have served for long periods as firemen on the lines of the defendant railroads and the other Southeastern Carriers and the seniority which they have thus acquired entitles them to obtain, and in the past and before the acts complained of herein, has enabled many to obtain some of the better paid, desirable runs on the defendant railroads and those of the other Southeastern Carriers herein mentioned.

25. The defendant railroads and the other railroads and terminals herein mentioned have, at all times herein referred to, established senority divisions in which locomotive firemen have preference rights to job assignments carrying more favored rates of pay, bonuses and working conditions which, but for the actions of the defendants complained of, would be based upon the length of service of the locomotive firemen in each division. Because of the unlawful agreements among the defendant railroads, the other Southeastern Carriers and the defendant Brotherhood, such seniority preference rights have been denied to the plaintiffs herein and to other Negro firemen employed by such roads.

26. The replacement of hand-fired steam locomotives on the railway lines of the defendant railroads and the other railroads and terminals herein mentioned by mechanical stokers, Diesel locomotives and other non-steam power has, under the terms of the said unlawful agreements and as a result of the aforesaid conspiracy led to the widespread and unlawful displacement of plaintiffs and other Negro firemen by white firemen having less seniority in service and the plaintiffs and other Negro firemen have been thereby damaged by loss of positions, wages and other lawful benefits to which plaintiffs and other Negro firemen would otherwise have been entitled, including benefits under the Railroad Retirement Act of 1937 (U. S. Code Title 45, Section 228 et seq.).

27. Plaintiff Leroy Graham is a Negro and a citizen of the United States residing in Tampa, Florida with seniority in employment as a fireman by defendant Seaboard Air Line Railway Company since November 8, 1924. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, plaintiff Leroy Graham was wrongfully displaced by defendant Seaboard Air Line Railway Company in his position as fireman on or about July 27, 1941, and his place was given to a white fireman with less seniority on a Diesel engine locomotive in violation of plaintiff's rights and to his injury and damage.

28. Plaintiff Joseph Munlin is a Negro and a citizen of the United States residing in Miami, Florida with seniority in employment as a fireman by defendant Seaboard Air Line Railway Company since January 5, 1924. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, plaintiff Joseph Munlin was wrongfully displaced by defendant Seaboard Air Line Railway in his position as fireman in April, 1942, and his place was given to a white fireman with only three or four months seniority on a Diesel engine locomotive in violation of plaintiff's rights and to his injury and damage.

29. Plaintiff John W. Warran is a Negro and a citizen of the United States residing in Savannah, Georgia with seniority in employment as a fireman by defendant Atlantic Coast Line Railway Company since July, 1912. In pursuance of the unlawful conspiracy, agreements and practices herein

referred to, plaintiff John W. Warran was wrongfully displaced by defendant Atlantic Coast Line Railway Company in his position as fireman in July, 1941 and his place was given to a white fireman with less seniority on a Diesel locomotive in violation of plaintiff's rights and to his injury and damage.

30. Plaintiff Ed Sullivan is a Negro and a citizen of the United States residing in Jacksonville, Florida with seniority in employment as a fireman by defendant Seaboard Air Line Railway Company since April 1, 1913. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, plaintiff Ed Sullivan was wrongfully displaced by defendant Seaboard Air Line Railway Company in his position as fireman in April, 1939 and his place was given to a junior white fireman with at least ten years less service on a Diesel engine locomotive in violation of plaintiff's rights and to his injury and damage.

31. Plaintiff Robert Murray is a Negro and a citizen of the United States residing in Savannah, Georgia with seniority in employment as a fireman by defendant Atlantic Coast Line Railway Company since February, 1913. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, plaintiff Robert Murray was wrongfully displaced by defendant Atlantic Coast Line Railway Company in his position as fireman and his place was given to a white fireman with less seniority on a Diesel engine locomotive in violation of plaintiff's rights and to his injury and damage.

32. Plaintiff William Pratt is a Negro and a citizen of the United States residing in Baldwin, Florida with seniority in employment as a fireman by defendant Atlantic Coast Line Railway Company since February, 1919. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, plaintiff William Pratt was wrongfully displaced by defendant Atlantic Coast Line Railway Company in his position as fireman in January, 1941 and his place was given to a junior white fireman with less seniority in violation of plaintiff's rights and to his injury and damage.

33. Plaintiff Luther Thomas is a Negro and a citizen of the United States residing in Rocky Mount, North Carolina with seniority in employment as a fireman by defendant At-

lantic Coast Line Railway Company since February, 1918. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, plaintiff Luther Thomas was wrongfully displaced by defendant Atlantic Coast Line Railway Company in his position as fireman in May, 1941, and his place was given to a junior white fireman with less seniority in violation of plaintiff's rights and to his injury and damage.

34. Plaintiff Sam Hogan is a Negro and a citizen of the United States residing in Tampa, Florida with seniority in employment as a fireman by defendant Seaboard Air Line Railway Company since 1919. Plaintiff Sam Hogan was displaced in his position as fireman on a steam locomotive in the year 1938, and again in May, 1941, by reason of the institution of Diesel engine locomotives, on both occasions by junior white firemen in violation of plaintiff's rights and to his injury and damage.

35. Plaintiff Ernest Duckett is a Negro and a citizen of the United States residing in Tampa, Florida with seniority in employment as a fireman by defendant Atlantic Coast Line Railway Company since about February, 1920. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, plaintiff Ernest Duckett was wrongfully displaced by defendant Atlantic Coast Line Railway Company in July, 1941, and his place was given to a junior white fireman with less seniority in violation of plaintiff's rights and to his injury and damage.

36. Plaintiff Spencer Hicks is a Negro and a citizen of the United States residing in Richmond, Virginia with seniority in employment as a fireman by defendant Atlantic Coast Line Railway Company since February 20, 1924. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, plaintiff Spencer Hicks was wrongfully displaced by defendant Atlantic Coast Line Railway Company in his position as fireman on or about June 26, 1947, and his place was given to a white fireman with less seniority on a Diesel engine locomotive in violation of plaintiff's rights and to his injury and damage.

37. Plaintiff Moses Maxwell is a Negro and a citizen of the United States residing in Charleston, South Carolina with seniority in employment as a fireman by defendant

Atlantic Coast Line Railway Company since 1924. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, plaintiff Moses Maxwell was wrongfully displaced by defendant Atlantic Coast Line Railway Company from his employment as a fireman and placed in a less desirable night-time job paying much less, and his place was given to a white fireman with only five years of service on a Diesel engine locomotive in violation of plaintiff's rights and to his injury and damage.

38. Plaintiff A. A. Fields is a Negro and a citizen of the United States residing in Sanford, Florida with seniority in employment as a fireman by defendant Atlantic Coast Line Railway Company since 1907. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, plaintiff A. A. Fields was wrongfully displaced by defendant Atlantic Coast Line Railway Company in his position as fireman in October, 1946, and his place was given to a white fireman with seniority only since 1940 on a Diesel engine locomotive in violation of plaintiff's rights and to his injury and damage.

39. Plaintiff Edward Jackson is a Negro and a citizen of the United States residing in Meridian, Mississippi, with seniority in employment as a fireman by the New Orleans and Northeastern Railway Company since 1924. In pursuance of the unlawful conspiracy, agreements and practices herein referred to plaintiff Edward Jackson was wrongfully displaced by the said New Orleans and Northeastern Railway Company from his position as fireman. His applications for position as fireman on Diesel locomotives to which he was entitled by virtue of his seniority were rejected on several occasions since about 1941, and these positions were given to white firemen with less seniority in violation of plaintiff's rights and to his injury and damage.

40. Plaintiff C. B. Battle is a Negro and a citizen of the United States residing in Richmond, Virginia with seniority in employment as a fireman by defendant Atlantic Coast Line Railway Company since August 29, 1917. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, plaintiff C. B. Battle was wrongfully displaced by defendant Atlantic Coast Line Railway Company in his position as fireman on or about June 26, 1947, and his place

was given to a white fireman with less seniority on a Diesel engine locomotive in violation of plaintiff's rights and to his injury and damage.

41. Plaintiff M. C. Davis is a Negro and a citizen of the United States residing in Richmond, Virginia with seniority in employment as a fireman by defendant Atlantic Coast Line Railway Company since December 14, 1916. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, plaintiff M. C. Davis was wrongfully displaced by defendant Atlantic Coast Line Railway Company in his position as fireman on or about September 10, 1947, and his place was given to a white fireman with less seniority on a Diesel engine locomotive in violation of plaintiff's rights and to his injury and damage.

42. Plaintiff Lonnie Gorham is a Negro and a citizen of the United States residing in Richmond, Virginia with seniority in employment as a fireman by defendant Atlantic Coast Line Railway Company since December 9, 1922. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, plaintiff Lonnie Gorham was wrongfully displaced by defendant Atlantic Coast Line Railway Company in his position as fireman on or about June 26, 1947, and his place was given to a white fireman with less seniority on a Diesel engine locomotive in violation of plaintiff's rights and to his injury and damage.

43. The plaintiffs John Cotton, James Johnson, Walter Thomas, Thomas Edwards, Sr. and George W. Zimmerman are all Negroes, citizens of the United States and residing in Rocky Mount, North Carolina. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, these plaintiffs were wrongfully displaced by defendant Atlantic Coast Line Railway Company in their positions as firemen, and their places were given to white firemen with less seniority on Diesel engine locomotives in violation of their rights and to their injury and damage.

44. Other Negro firemen employed by each of the defendant railroads and the other carriers mentioned herein have been displaced in their positions as firemen and either discharged from employment or demoted to less desirable jobs, and their positions given to white firemen with much less seniority, in violation of their rights and to their in-

jury and damage. Unless enjoined the defendants and the carriers owned or controlled by them will continue unlawfully to displace and demote Negro firemen.

45. But for the conspiracy and the unlawful practices and agreements of the Brotherhood, defendant railroads and the other Southeastern Carriers, plaintiffs would have been continued in their employment as firemen and would have enjoyed the benefits of seniority and tenure in their respective positions; however, as a result of the said unlawful conspiracy, practices and agreements plaintiffs and other Negro firemen have been deprived of their employment and have been denied such benefits and their property and seniority rights and their tenure of employment have been destroyed, in violation of the Railway Labor Act and the Constitution of the United States.

46. In 1944 the Supreme Court of the United States adjudged the Washington Agreement, the supplemental agreement above referred to, and the practices thereunder to be illegal and violative of the Railway Labor Act. Notwithstanding this determination by the Supreme Court the defendants and the other Southeastern carriers have failed to discontinue their unlawful agreements and practices but have continued to discriminate against plaintiffs and other Negro firemen similarly situated in plain violation of the law and the decisions of the highest court of the land.

47. The unlawful practices and agreements of the defendants complained of herein are continuing and are causing injury and damage to plaintiffs and other Negro firemen similarly situated on whose behalf this action is brought, and plaintiffs and such other Negro firemen are still being excluded from positions as firemen on the aforesaid railroads to which they are rightfully entitled, and they are being denied seniority and other rights which are lawfully theirs. The continued exclusion of plaintiffs and other Negro firemen from their proper positions upon which they depend for their livelihood and the continued denial to them of their seniority and other rights aggravate and increase their damage and injury with the passage of time and unless this court grants the relief prayed for, plaintiffs will be irreparably damaged.

48. Plaintiffs have no adequate remedy at law.

Wherefore plaintiffs pray that:

a. This court take jurisdiction and determine the rights of the parties and enter judgment declaring the said agreement of February 18, 1941 and other similar agreements among the same parties and the practices thereunder to be invalid and unenforceable as collective bargaining agreements regulating and controlling the employment of firemen on the railroads which are parties to the said agreements with the Brotherhood; declaring that the said agreements are null and void insofar as they deprive plaintiffs and other Negro firemen of seniority and employment rights and declaring that plaintiffs have been illegally removed from their positions and should be restored to such jobs and assigned to such runs as their seniority rights would entitle them to but for the said unlawful agreements and the practices thereunder.

b. This court issue a permanent injunction enjoining defendants, their officers, agents, servants, employees and attorneys and all persons in active concert or participation with them from recognizing or enforcing or complying with the said agreement of February 18, 1941 and any other agreements or understandings which in terms or application countenance or enforce similar unlawful and discriminatory practices against plaintiffs and other Negro firemen similarly situated or from taking any action which would have similar discriminatory or unlawful effect as would the enforcement of such agreements or practices.

c. The permanent injunction issued against the defendant railroads should order and direct the defendant railroads, their officers and agents to take immediate and effective action to cause the other railroads and terminal companies herein mentioned which are owned or controlled by them to cease and desist from recognizing or enforcing or complying with the said agreement of February 18, 1941 or other agreements or understandings to which they may be parties which in terms or application countenance or enforce similar unlawful and discriminatory practices against plaintiffs and other Negro firemen similarly situated or from taking any action which would have similar discrimi-

natory or unlawful effect as would the enforcement of such agreements or practices.

d. This court enter judgment ordering defendants to restore plaintiffs and other Negro firemen similarly situated to their positions from which they were wrongfully and unlawfully displaced and that their seniority and other employment rights be reinstated.

e. This court issue a permanent injunction against defendant Brotherhood, its officers, agents, servants, employees, attorneys and subordinate lodges and all persons in active concert or participation with them enjoining them from purporting to act as plaintiffs' representative or as the representative of the class or craft of locomotive firemen under the Railway Labor Act so long as defendant Brotherhood and its subordinate lodges and their officers and agents shall not represent or act fairly on behalf of all locomotive firemen including these plaintiffs and other Negro firemen or shall discriminate against them in matters relating to wages, seniority, tenure or other conditions of employment.

f. Plaintiffs recover judgment against defendants for damages for their loss of employment and wages by reason of the said unlawful practices and agreements of the defendants.

g. That pending the final hearing and determination of the action, this court issue a preliminary injunction against the defendants enjoining and restraining them from continuing the unlawful acts and practices complained of.

h. That the plaintiffs may have such other, further and different relief as to the court may seem proper, together with the costs and disbursements of this action.

EXHIBIT A

Agreement

between

THE SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEE

representing the

Atlantic Coast Line Railway Company
Atlanta and West Point Railroad Company and Western Railway of Alabama
Atlanta Joint Terminals
Central of Georgia Railway Company
Georgia Railroad
Jacksonville Terminal Company
Louisville and Nashville Railroad Company
Norfolk and Portsmouth Belt Line Railroad Company
Norfolk Southern Railroad Company
St. Louis-San Francisco Railway Company
Seaboard Air Line Railway Company
Southern Railway Company (including State University Railroad Company and Northern Alabama Railway Company)
The Cincinnati, New Orleans and Texas Pacific Railway Company
The Alabama Great Southern Railroad Company (including Woodstock and Blocton Railway Company and Belt Railway Company of Chattanooga)
New Orleans and Northeastern Railroad Company
St. Johns River Terminal Company
New Orleans Terminal Company
Georgia Southern and Florida Railway Company
Harriman and Northeastern Railroad Company
Cincinnati, Burnside and Cumberland River Railway Company
Tennessee Central Railway Company

and the

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS

(1) On each railroad party hereto the proportion of non-promotable firemen, and helpers on other than steam power, shall not exceed fifty per cent in each class of service estab-

lished as such on each individual carrier. This agreement does not sanction the employment of non-promotable men on any seniority district on which non-promotable men are not now employed.

(2) The above percentage shall be reached as follows:

(a) Until such percentage is reached on any seniority district only promotable men will be hired.

(b) Until such percentage is reached on any seniority district all new runs and all vacancies created by death, dismissal, resignation or disqualification shall be filled by promotable men. A change in the starting time of the same run or job will not be considered as constituting a new run.

(3) Except as provided in items (2)(a) and (2)(b) men now holding seniority as firemen, or helpers on other than steam power, shall be permitted to exercise seniority in accordance with their seniority and the rules of their respective schedules.

(4) It is understood that promotable firemen, or helpers on other than steam power, are those who are in line for promotion under the present rules and practices to the position of locomotive engineer.

(5) It is understood and agreed that on any road having, in the opinion of its B. of L. F. & E. Committee, more favorable rules or conditions than above stipulated, such rules and conditions may at the option of such committee be retained in lieu of the above provisions.

(6) All persons hereafter hired as firemen shall be required, in addition to showing, in the opinion of management, reasonable proficiency, to take within stated periods to be fixed by management, but in no event to extend over a period of more than three years, two examinations to be prepared by management and to be applied to all alike to test their qualifications as firemen. A fireman failing to pass either examination shall have a second trial within three months.

Firemen hereafter hired declining to take or failing to pass either of the examinations provided for in the preceding paragraph shall be dropped from the service.

All promotable firemen now in the service who are physically qualified, who have not heretofore been called for examination for promotion, or who have not waived promotion, shall be called in their turn for promotion. When so called should they decline to take such examination for promotion or fail to pass as herein provided, they shall be dropped from the service.

(7) It is expressly understood that in making this agreement representatives of the employees do not waive and are in no way prejudiced in the right to request agreements on the individual carriers here represented which will restrict the employment of helpers on other than steam power to promotable men; and it is agreed that this question is to be negotiated to a conclusion with the individual carriers.

(8) This agreement shall become effective February 22, 1941.

Signed at Washington, D. C., this 18th day of February, 1941.

For the Carriers:

SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEE
(S.) C. D. MACKAY
Chairman

C. D. MACKAY
H. A. BENTON
S. S. SLOCUM
H. L. WOUMAN
Per C. P. KING
Committee Members

For the Employees:

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS
(S.) D. B. ROBERTSON
President

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN'S COMMITTEE
(S.) A. G. METCALFE
Chairman

EXHIBIT B

National Mediation Board

Washington

Mediation Agreement

George A. Cook, Chairman
Otto S. Beyer
David J. Lewis,

Robert F. Cole, Secretary

Mediation Agreement

In settlement of differences as set forth in an application for Mediation dated January 15, 1941, and described in National Mediation Board Docket Case No. A-905, and under the provisions of the Railway Labor Act, it is mutually agreed that the proposals submitted by the General Grievance Committees of the Brotherhood of Locomotive Firemen and Enginemen, namely:

1. Only promotable men will be employed for service as locomotive firemen or for service as helpers on other than steam power.

2. When new runs or jobs are established runs or jobs in any service, only promotable firemen or helpers will be assigned to them.

3. When permanent vacancies occur on established runs or jobs in any service, only promotable firemen or helpers will be assigned to them.

4. It is understood that promotable firemen or helpers on other than steam power are those who are in line for promotion under the present rules and practices to the position of locomotive engineer.

to the following carriers:

Atlantic Coast Line Railway Company
Atlanta and West Point Railroad Company and Western Railway of Alabama
Atlanta Joint Terminals
Central of Georgia Railway Company

Georgia Railroad
Jacksonville Terminal Company
Louisville and Nashville Railroad Company
Norfolk and Portsmouth Belt Line Railroad Company
Norfolk Southern Railroad Company
St. Louis-San Francisco Railway Company
Seaboard Air Line Railway Company
Southern Railway Company (including State University Railroad Company and Northern Alabama Railway Company)
The Cincinnati, New Orleans and Texas Pacific Railway Company
The Alabama Great Southern Railroad Company (including Woodstock and Blocton Railway Company and Belt Railway Company of Chattanooga)
New Orleans and Northeastern Railroad Company
New Orleans Terminal Company
Georgia Southern and Florida Railway Company
St. Johns River Terminal Company
Harriman and Northeastern Railroad Company
Cincinnati, Burnside and Cumberland River Railway Company
Tennessee Central Railway Company

which carriers, for the purpose of this mediation, were represented by the Southeastern Carriers' Conference Committee, is disposed of by the agreement of the parties attached hereto, effective February 22, 1941.

Signed at Washington, D. C., this 18th day of February, 1941.

For the Carriers:

SOUTHEASTERN CARRIERS CONFERENCE COMMITTEE
(S.) C. D. MACKAY
Chairman

C. D. MACKAY
H. A. BENTON
S. S. SLOCUM
H. L. WOUMAN
Per C. P. KING

For the Employees:

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS
(S.) D. B. ROBERTSON
President

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN'S COMMITTEE
(S.) A. G. METCALFE
Chairman

Witnessed:

(S.) GEORGE A. COOK
Chairman, National Mediation Board
(S.) OTTO S. BEYER
Member, National Mediation Board

Motion for Preliminary Injunction

Plaintiffs move the Court for a preliminary injunction.

(a) Enjoining the defendants, their officers, agents, servants, employees and attorneys and all persons in active concert or participation with them from recognizing or enforcing or complying with the agreement of February 18, 1941, which is Exhibit "A" to the complaint herein and any other agreements or understandings which in terms or application, countenance or enforce similar discriminatory practices against the plaintiffs and other Negro firemen similarly situated, or from taking any action which would have similar discriminatory or unlawful effect as would the enforcement of such agreements or practices,

(b) Ordering and directing the defendant railroads, their officers and agents to take immediate and effective action to cause the other railroads and terminal companies mentioned in Paragraphs 13, 14 and 15 of the complaint and which are owned or controlled by the defendant railroads to cease and desist from recognizing or enforcing the said agreement of February 18, 1941, or other agreements or understandings to which they may be parties which in terms or application, countenance or enforce similar unlawful or discriminatory practices against plaintiffs and other Negro firemen similarly situated or from taking any action which would have similar discriminatory or unlawful effect as would the enforcement of such agreements or practices,

(c) Enjoining the defendant Brotherhood, its officers, agents, servants, employees, attorneys and subordinate lodges and all persons in active concert or participation with them from purporting to act as plaintiffs' representative or as the representative of the class or craft of locomotive firemen under the Railway Labor Act so long as defendant Brotherhood and its subordinate lodges shall

not represent or act fairly on behalf of all locomotive firemen, including these plaintiffs and other Negro firemen, or shall discriminate against these plaintiffs or other Negro firemen in matters relating to wages, seniority, tenure or other conditions of employment; on the grounds that:

1. The agreement of February 18, 1941, and the other acts complained of in the complaint filed in this action have been adjudicated by the Supreme Court of the United States to be unlawful under the Constitution and laws of the United States and particularly under the Railway Labor Act;

2. Notwithstanding such adjudication by the Supreme Court of the United States, the defendants have continued and, unless restrained, will continue their unlawful discriminatory practices and agreements against these plaintiffs and other Negro firemen similarly situated;

3. Such action by the defendants will result in the loss of jobs, seniority and other valuable property rights to the plaintiffs and will result in irreparable injury to them, as more particularly appears in the complaint and affidavit of Ben J. McLaurin, annexed hereto;

4. The issuance of a preliminary injunction herein will merely restrain the defendants from continuing unlawful conduct, and is necessary to prevent irreparable injury to the plaintiffs pending the final hearing and determination of this action.

Affidavit in Support of Motion for a Preliminary Injunction

DISTRICT OF COLUMBIA,
City of Washington, ss:

BENJAMIN F. McLAURIN, being duly sworn, deposes and says:

1. I am the International Field Organizer of the Brotherhood of Sleeping Car Porters, an international union affiliated with The American Federation of Labor. The Brotherhood is the bargaining agent and representative under the Railway Labor Act for railroad train, chair car, coach porters and attendants many of whom are Negroes.

2. As a result of repeated appeals of delegations of Negro firemen for assistance, the Brotherhood of Sleeping Car Porters has interested itself in the efforts of Negro firemen to secure their rights under the Constitution and laws of the United States and redress for the injury which they have suffered in the past because of the unlawful acts of the defendants and the other railroads and terminal companies mentioned in the complaint.

3. Accordingly, with the aid of the Brotherhood of Sleeping Car Porters, there was organized on March 28, 1941 a Provisional Committee to Organize Colored Locomotive Firemen, of which I am the Field Organizer. A great many Negro firemen have joined the said Committee, so that today the membership of the Committee comprises the greater portion of all the Negro firemen on the railway lines of the United States as well as the greater portion of all Negro firemen on the railroads involved in this action.

4. The plaintiffs in this action and the other Negro firemen in whose behalf this suit has been brought are men of little means who are not financially or otherwise able to take necessary action to secure their rights under the law. This is especially true because the acts complained of have deprived these plaintiffs of the jobs or seniority rights upon which they depend for their livelihood.

5. In furtherance of the purpose of the Brotherhood of Sleeping Car Porters to assist these plaintiffs and other Negro firemen who have been displaced or demoted because of the unlawful acts of the defendants, and as Filed Organizer of the said Provisional Committee, I have been in close and active contact with these firemen and am fully familiar with the facts and practices complained of and with the events out of which this action arose. I have read the Complaint in this action and believe the allegations to be true.

6. The defendant Brotherhood of Locomotive Firemen and Enginemen represents all locomotive fireman employed by the defendant railroads and the other Southeastern railroads and terminal companies mentioned in the complaint for purposes of collective bargaining under the Railway Labor Act, having been selected as bargaining agent by the majority of the craft. The defendant Brother-

hood has been such an agent for many years including the entire period mentioned in the complaint in this action. Negro firemen who constitute a minority of the craft are not admitted to membership in the defendant Brotherhood but nonetheless they must accept it as their bargaining representative. Negro firemen are not admitted to membership in the defendant Brotherhood solely because they are Negroes.

7. Matters of great importance to locomotive firemen in the realm of collective bargaining are seniority rights and the right to promotion to the more highly paid position of locomotive engineer. Upon the seniority of the fireman depends the right to the more desirable runs on the railroads, and upon the right of promotion depends the possibility of the fireman advancing to the position of engineer.

8. Railroads do not employ Negroes as locomotive engineers and accordingly, the defendant railroads and the defendant Brotherhood have always regarded and designated Negro firemen as "non-promotable" men. Other firemen if they possess the requisite qualifications are eligible for promotion to engineers. Because Negro firemen are "non-promotable" these plaintiffs and other Negroes have served for long periods as firemen on the lines of the defendant railroads and other Southeastern Carriers and the seniority which they have thus acquired entitles them to obtain and in the past, and before the acts complained of, has enabled many to obtain some of the better paid and more desirable runs on the railroads for which they work.

9. Starting some years before 1941 the defendant Brotherhood initiated its practice of seeking arrangements or agreements with the railroads involved in this action to have them hire white promotable firemen in greater numbers than had theretofor been the case and to discriminate in new hirings against Negroes. Various arrangements in the form of secret understandings, "gentlemen's agreements" and other forms of agreements were made between the defendant Brotherhood and the Southeastern Carriers extending the discrimination against the employment of Negro firemen and of disregarding the seniority rights which they had built up during long periods of service. Attached hereto and marked Exhibit A is a

copy of a communication signed by one Thad S. Lee and approved by R. J. Tillery, a Vice President of the defendant Brotherhood, which evidences in part the nature of the agreements and the manner in which they were consummated.

10. In March of 1940, the defendant Brotherhood demanded of the railroads herein involved and other Southeastern Carriers that existing working agreements and practices be modified and that the discrimination against Negro firemen be further extended in such a way as would drive Negro firemen completely out of service with the carriers. In making this demand the defendant Brotherhood purported to act as representative of the entire craft of firemen under the Railway Labor Act. On February 18, 1941, the railroads entered into a written agreement with the defendant Brotherhood as the exclusive representative of the craft, which provided that *not more* than 50 per cent of the firemen in each class of service in each seniority district should be Negroes, and that until the percentage of white firemen in each district reached 50 per cent, all new runs and all vacancies should be filled by white men and that Negroes should not be permitted employment in any seniority district in which they were not then working. This agreement was executed in Washington, D. C. by the defendant Brotherhood and by the defendant railroads and the other Southeastern Carriers, acting through the Southeastern Carriers' Conference Committee.

11. This Washington agreement reserved the right of the defendant Brotherhood to press for further restrictions on the employment of Negro firemen on the lines of the individual carriers including the defendant railroads and the other railroads and terminal companies mentioned in the complaint. In furtherance of this provision, on May 12, 1941, the defendant Brotherhood negotiated a supplemental agreement with The Louisville and Nashville Railroad Company which further curtailed the seniority rights of Negro firemen and further restricted their employment. I am informed and believe that from time to time since February 18, 1941, the defendant Brotherhood has made various supplemental arrangements with others of the defendant railroads and railroads and terminal

companies mentioned in the complaint, which extended the unlawful restrictions and discriminations of the February 18, 1941, agreement. These arrangements were not made public and they were, upon information and belief, sometimes in writing and sometimes in the form of secret understandings and "gentlemen's agreements". The effect of such agreements and practices was to restrict the percentage of Negro firemen considerably below the 50% limit set by the Washington Agreement and in some cases the effect has been to eliminate Negro firemen from the service completely.

12. In recent years steam power has been displaced in ever increasing volume by Diesel locomotives and other forms of non-steam power on the lines of the defendant railroads and the other railroads and terminal companies mentioned in the complaint. Some of the most desirable runs and the best paid jobs have become those of firemen on trains propelled by other forms of power than steam power. By the terms of the Washington Agreement, the defendants and the other carriers which were parties to the agreement undertook to employ only promotable men (i.e., white men) to positions as locomotive firemen or helpers on such trains. As a result, the carriers and the defendant Brotherhood have arranged to staff and are staffing trains with junior "promotable" men notwithstanding that they lack the experience of the senior Negro firemen.

13. All of these agreements and arrangements were made by the defendant Brotherhood with the carriers without giving to these plaintiffs or to any of the Negro firemen any notice or opportunity to be heard with respect to their provisions and in fact there was no disclosure to the Negro firemen affected of the existence of these agreements and arrangements until they were put into effect and were operating to the detriment of the Negro firemen.

14. As a result of these agreements and arrangements, the defendant Brotherhood, purporting to act as representative of the entire class of firemen of the railroads, caused the plaintiffs to lose their jobs or to be demoted to less desirable runs and more poorly paid jobs regardless of seniority, fitness and ability. Such of these plaintiffs and other Negro firemen who were not discharged outright

from their employment with the carriers, were assigned to more arduous and difficult jobs with longer hours and with less pay. The railroads have refused to restore plaintiffs and other Negro firemen to their prior positions and to give them the rights to which their seniority entitled them, and the defendant Brotherhood refused, although it was acting as representative of the class, to take any action to have the plaintiffs and other Negro firemen restored to the positions to which they were entitled.

15. In an effort to have these unlawful agreements and practices between defendants and the other named carriers corrected and to prevent the rapid elimination of Negro firemen from the railroads of this country, complaints were made to the President's Committee on Fair Employment Practices, which after notice to the defendant Brotherhood and the other parties to the February, 1941, agreement, held public hearings in Washington, D. C., on September 15-18, 1943. The defendant Brotherhood filed no answer to any of the charges and otherwise ignored the proceedings, and the carriers admitted that they were parties to the Washington Agreement and that by virtue of its provisions the employment of Negroes as firemen on their lines was being restricted. On November 18, 1943, the said Committee issued its "Summary, Findings and Directives." The Committee found that the agreement of February 18, 1941, discriminated against Negro firemen and restricted their employment opportunities; and that the said agreement was in conflict with and in violation of Executive Order 9346, issued May 27th, 1943. The Committee directed the carriers and the defendant Brotherhood immediately to cease and desist from their discriminatory practices affecting the employment of Negroes and directed the carriers and defendant Brotherhood to set aside the February 18, 1941 agreement and ordered the carriers to adjust their employment policies and practices so that all needed workers would be hired and all employees promoted or upgraded without regard to race, creed, color or national origin. The defendant Brotherhood was directed to cease its discriminatory practices while acting as bargaining agent for the craft of firemen, and to cease all practices which deprived Negro firemen of the same opportunities afforded white

firemen in choosing and conferring with bargaining representatives in respect to the adjustment of grievances and in the negotiation of any agreements with the Southeastern Carriers concerning hiring, tenure, promotion or other conditions of employment.

16. Neither the defendant Brotherhood nor any of its subordinate lodges nor any of the carriers who were parties to the Washington Agreement has obeyed or complied with any of the directives of the President's Committee and has continued without letup the discriminatory practices called for by the Washington Agreement and the other agreements between the defendant Brotherhood and the Southeastern Carriers.

17. Some time in 1942, several of the Negro firemen who had been employed by some of the carriers who were parties to the Washington Agreement instituted actions in the State and Federal Courts to enjoin enforcement of the Washington Agreement and the supplemental agreement of May 12, 1941 which discriminated against them, and for damages against the defendant Brotherhood and such railroads for loss of wages and the impairment of other property rights which they had suffered by virtue of such discriminatory practices. Two of these actions entitled *Steele v. Louisville and Nashville Railroad Company et al.*, and *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, et al.*, reached the Supreme Court of the United States in 1944. In unanimous opinions of the Court rendered by the Chief Justice of the United States (323 U. S. 192; 323 U. S. 210) the Washington Agreement of February 18, 1941, the supplemental agreements and the practices of the Brotherhood and railroads thereunder were held illegal and violative of the provisions of the Railway Labor Act. The Supreme Court decided that the defendant Brotherhood, which as bargaining agent under the Railway Labor Act represents all firemen, should be enjoined from continuing its discriminatory arrangements and practices with the carriers and should be prevented from having its white members take the benefit of such discriminatory action. The Court held that the railroads could not lawfully carry out such discriminatory contracts with the bargaining representative for the

firemen which the bargaining representative was prohibited by the statute from making.

18. These decisions of the Supreme Court were rendered on December 18, 1944, but, notwithstanding the clear declaration by the highest Court of the land that the agreements and the practices thereunder were unlawful under the Constitution and laws of the United States, the defendants and the other Southeastern Carriers have ignored these decisions and have continued and are continuing to carry out the provisions of the said unlawful agreements.

19. The displacement of steam power by Diesel locomotives on American railroads and on the roads of the Southeastern Carriers has increased rapidly with the result that, because of the provisions of the agreements and the practices complained of, Negro firemen are being displaced or demoted unlawfully at an ever increasing rate. Unless the laws of the United States are obeyed and these practices enjoined, the complete elimination of Negroes from their time honored jobs as locomotive firemen in the near future is inevitable.

20. The Negro fireman's job and seniority rights are matters of economic life or death to him. Those discharged and those deprived of their seniority rights as firemen by the Southeastern Carriers Agreement are deprived not only of their jobs but also of the opportunity to practice the skills which they have developed through a lifetime of work. They cannot now develop new skills; other suitable jobs are not available to them. The result of the agreements and practices alleged in the complaint has therefore meant tragic ruin to these Negro firemen who have felt the impact of the defendants' unlawful conduct, and will have similar tragic consequences to the other Negro firemen unless the defendants are enjoined.

21. In all Court actions heretofore brought to enjoin the unlawful practices here complained of, the defendants have entered dilatory pleas and motions and have resisted all efforts to bring the issues to early determination. It is to be anticipated that similar moves will be made in this action. The passage of time necessary before there can be a final hearing and determination in this action will bring about the displacement or demotion of many of these plaintiffs

and ultimate judgment in their favor will be a hollow victory. Such displaced firemen have no financial means of their own to support themselves and their families during the long period which would elapse between the date of their discharge and the ultimate judgment in this case. The decisions of the Supreme Court on the very agreements and practices here complained of leave no question that these plaintiffs will ultimately prevail and that the acts sought to be enjoined violate the Constitution and laws of the United States. Unless the enforcement of the said agreements and the practices thereunder are enjoined pending the final hearing in this action, irreparable injury and loss of the means of livelihood will be suffered by many of the plaintiffs and other Negro firemen similarly situated.

22. Moreover, the preservation of the *status quo* by a preliminary injunction will not cause any damage to the defendant carriers since it will merely enjoin them from carrying out agreements with the defendant Brotherhood which deprive them of firemen of long tenure and experience and requires them to accept instead junior white employees of much more limited skill and experience.

Brotherhood of Locomotive Firemen and Enginemen

December 11, 1942.

To Officers and Members of the Brotherhood of Locomotive Firemen and Enginemen, and Other Employees of the Classes Represented by That Organization on the Atlantic Coast Line Railroad and Charleston and Western Carolina Railway.

SIRS AND BROTHERS:

There was no agreement governing wages and working conditions of locomotive firemen, hostlers, and hostler helpers on the Atlantic Coast Line Railroad until 1919, at which time the B. of L. F. & E. secured representation and negotiated an agreement. Only about 20 per cent of the firemen were of a promotable character at that time and as a result the company had great difficulty in maintaining enough engineers to take care of its business.

Through the efforts of the B. of L. F. & E. understandings were reached from time to time with the management to the

effect that promotable men would be hired in greater numbers.

In 1925, former General Chairman, R. L. Glenn, reached a gentlemen's agreement with the management that only promotable men would be hired. White men then and now are classed by the management as promotable and Negroes were then and are now classed by the management as non-promotable.

There were a few violations of this gentlemen's agreement between 1925 and 1927, all of which were duly protested and in most cases corrections were made. However, since 1927, the agreement has been religiously observed and only promotable firemen were hired until the latter part of 1942.

In 1927, the general grievance committee was successful in negotiating an agreement with the management providing that one-third of all assignments would be filled by white men, who, as heretofore stated, are considered promotable by the management. Promotable firemen are required to undergo very strict examinations, promotable firemen are dismissed from the service. Many have been dismissed in the past and no doubt many will be dismissed in the future for failure to pass the examinations. Non-promotable men never become engineers but continue on as firemen, filling the places where promotable men must get their training.

In 1929, the general grievance committee succeeded in revising the agreement to provide that all assignment would be made on a rate of 50—50 as between white and colored firemen—white firemen being promotable and colored firemen being non-promotable.

Early in November, 1942, General Chairman Lee learned, through rumor, that non-promotable men were being hired as locomotive firemen. He wired General Manager Sibley as follows:

November 3, 1942.

"Mr. C. C. Sibley, General Manager, Atlantic Coast Line Railroad Company, Wilmington, N. C.

I have information from my local representatives at several terminals to the effect that local supervisors

advised them that they had authority to employ non-promotable firemen. Trust this information is erroneous. Please advise if such authority has been granted and if management contemplates employing non-promotable firemen. Local committees will be glad to cooperate and furnish sufficient promotable applicants if called upon by local supervisors.

(Signed) THAD S. LEE."

The General Manager made no answer to this telegram. On January 17th, General Chairman Lee again wired General Manager Sibley and asked that he name a date for conference with the Executive Committee. November 23rd was named and conference held on that date. Mr. Sibley tried to evade the issue by denying that any instructions had been issued to the employing officers to hire non-promotable men notwithstanding members of the Executive Committee made it clear that they had been informed by some of the employing officers that they had such instructions.

November 24th the Executive Committee again met the General Manager at which time Vice-President Tillery of the Brotherhood was present. This conference bore no more fruit than the one on the 23rd. The gentlemen's agreement was called to the General Manager's attention on a number of times and each time he denied any knowledge of it. After the conference was concluded Vice-President Tillery wired former General Chairman Glenn who is now connected with the Man-Power Department of the United States Government. November 25th Brother Glenn replied and same is herewith quoted:

November 25th, 1943, 5:37 P. M.,

"R. J. Tillery, Wilmington Hotel, Wilmington, N. C.

Your wire date conference during May 1925 with F. W. Brown the Assistant Manager it was verbally agreed that no non-promotable firemen would be hired in the future (Stop) During the fall of 1925 some non-promotable men were hired on the Montgomery District and the Jacksonville District. Practically all of

those were eliminated from the seniority roster and I am sure by checking the roster since 1925 you will find that this understanding has been complied with on the system (Stop) Efforts were made by Pearsall and Bullock to hire non-promotable men on Richmond and Fayetteville District and on protest by the committee they were instructed to hire only promotable men.

(Signed) R. L. GLENN."

An attempt was then made to appeal to Vice-President, F. W. Brown, however, he declined to meet the officers of the Brotherhood. Vice-President Tillery finally succeeded in contacting him by telephone, and among other things, called attention to the gentlemen's agreement he had with former General Chairman Glenn. Brown denied that he had ever talked with Glenn about the matter. Later Vice-President Tillery personally talked with Glenn and he confirmed his statement made by wire, which has heretofore been quoted.

After all efforts had apparently failed to effect a settlement through conferences with the management the following letter was sent to General Manager Sibley:

"Wilmington, N. C.,
December 1, 1942.

Mr. C. C. Sibley, General Manager, Atlantic Coast Line Railroad, Wilmington, N. C.

DEAR SIR:

Referring our conference November 24th, regarding the employment of non-promotable firemen.

You declined to discontinue the practice of employing such men and I have since undertaken to appeal or at least talk with Vice-President Brown about the matter. Mr. Brown declined to see me.

We made it very clear to you that we were ready and willing to cooperate with the company in securing suffi-

cient promotable men to meet all needs. You made no comment in this connection and of course we can only assume the Company does not desire our cooperation. We undertook to point out to you and now repeat, that it is unfair to the promotable men to have the jobs as firemen filled with non-promotable men who apparently have no responsibilities except to act as firemen and eventually become drones, while the promotable men must study, purchase expensive books, etc. and if they fail to pass the very strict examinations required of them they are removed from the service. The non-promotable men therefore do not contribute to the efficient and safe operation of the railroad. The general public certainly is vitally interested in safety at least.

The promotable men now being hired by the Atlantic Coast Line are all Negroes, so far as we know. These Negroes are non-promotable because the management has decreed that they be non-promotable. We found, at the conference, that you indicated a desire to discuss discrimination as between the Negro and white race. In that connection you said nothing about the company promoting only white men to the position of locomotive engineers.

We are indeed sorry that the management has taken the position it has in this important matter and hope that upon further reflection our position will be agreed to, as certainly your decision given at the conference will not be accepted.

Very truly yours,

(Signed) R. J. Tillery,
Vice-President, B. of L. F. & E.

Copy to:

Thad S. Lee, Gen. Chmn.
B. of L. F. & E."

On December 9th, General Chairman Lee convened the entire general grievance committee in Jacksonville, Florida,

and after very thorough consideration was given the entire matter the following resolution was unanimously adopted.

"Whereas, the management of the Atlantic Coast Line Railroad entered into a gentlemen's agreement in 1925 or thereabouts with a representative of the Brotherhood of Locomotive Firemen and Enginemen to the effect that no more non-promotable men would be employed as locomotive firemen and from 1927 to latter part of 1942 this agreement has been fully complied with by the employing officers of the railroad, and

"Whereas, beginning about November 1, 1942, the management of the railroad began employing non-promotable men some of whom have now actually established seniority by performing service for pay, and

"Whereas, the General Chairman and the Executive Committee with the assistance of a Grand Lodge Officer have failed through peaceful negotiations to induce the management to observe the gentlemen's agreement above referred to, and

"Whereas, through these peaceful negotiations the Brotherhood of Locomotive Firemen and Enginemen have been unable to effect a settlement of the dispute, therefore be it

Resolved, that the entire matter be submitted to the membership and other firemen, hostlers and hostler-helpers on the Atlantic Coast Line Railroad and the Charleston and Western Carolina Railway Company, in the form of a strike ballot, so that they may decide for themselves whether they will leave the service and participate in a strike in accordance with the laws of the Brotherhood of Locomotive Firemen and Enginemen if a satisfactory settlement cannot otherwise be reached, and be it further

Resolved, that the General Chairman with the assistance of the Grand Lodge officer assigned to assist, be hereby is authorized and directed to prepare and forward to the Local Chairman and Assistant Local Chairman the strike ballot with necessary instructions for taking the vote, and such instructions to include fixing

a time and date for counting the vote and announcing the results, and be it further

Resolved, that in event a majority vote in favor of withdrawing from the service, the General Chairman and Grand Lodge Officer, shall have authority, with the approval of the International President, to fix a date and time for the strike to become effective and to issue necessary instructions for the conduct of the strike.

Jacksonville, Florida

December 9th, 1942

The Committee then adopted a motion as follows:

"That because of the fact that the Jacksonville Terminal Company is not represented by the management of the Atlantic Coast Line Railroad and the Charleston and Western Carolina Railway, and the further fact that no attempt has been made by the management of the Jacksonville Terminal Company to violate the agreement by hiring non-promotable men as locomotive firemen, hostlers and hostler-helpers, it is the sense of this committee that the resolution, just adopted, providing for the spreading of a strike ballot on the Atlantic Coast Line and Charleston and Western Carolina Railway, will not apply to the Jacksonville Terminal Company unless the management of the Jacksonville Terminal Company later violate the agreement by hiring non-promotable men. In that event, the General Chairman and the Grand Lodge Officer assigned, are hereby authorized and directed to arrange for a strike ballot to also be spread on the property.

From the foregoing it will be quite evident to you that the management has decided to completely disregard the gentlemen's agreement of long standing without just cause, thereby restoring a condition existing prior to 1925. In other words, all hiring assignments of any importance will be filled by non-promotable firemen. The reason for the management adopting this policy, in the opinion of the committee, is for the purpose of weakening the organiza-

tions on the property. Certainly there could be no point in hiring men who cannot, under the management's policy, follow through in any position which they may qualify for promotion. Non-promotable firemen regardless of education or ability when hired, will have very little incentive and naturally become drones. They will, however, fill the places where the promotable men must get their training in order to become efficient and safe engineers.

Therefore, the appropriate representatives of the organization representing the agreement, after a full review of the circumstances related to the situation, have voted unanimously to refer the matter to the membership and others employed in the capacities represented by the organization, for their consideration and vote as to whether or not they are in favor of peacefully withdrawing from the service and engaging in a legal strike authorized in accordance with the laws of the organization, unless a settlement satisfactory to the General Chairman and Grand Lodge Officer assigned can be reached before date strike is scheduled to begin.

This statement is submitted for your information.

Attached is a ballot on which you will cast your vote for or against a strike. Sign your name, occupation, lodge number—if a member—and place in envelope provided which is marked "ballot," and hand to the party who furnished you with this statement and ballot.

Your fraternally,

THAD S. LEE
General Chairman, B. of L. F. & E.
ATLANTIC COAST LINE
CHARLESTON & WESTERN CAROLINA.

Approved:

R. J. TILLERY
Vice-President
B. of L. F. & E.

(Copy)

Ballot

I have carefully read the attached statement with reference to the hiring of non-promotable firemen, and hereby cast my vote —— ———— a strike if settlement satisfac-
For Against
tory to the Grand Lodge Officer and General Chairman cannot be obtained. I hereby authorize the Grand Lodge Officer assigned and the General Chairman or their duly authorized representative to act as my agents or attorneys in the further handling of the matter.

Name .....

Occupation .....

Member B. of L. F. & E. Lodge No. .....

Non-Member .....

Motion on Behalf of Brotherhood of Locomotive Firemen and Enginemen to Dismiss or to Stay Further Proceedings

The Defendant, Brotherhood of Locomotive Firemen and Enginemen, moves the Court as follows:

1. To dismiss the action on the ground that it is in the wrong district because (a) the jurisdiction of this Court is invoked solely on the ground that the action arises under the Constitution and Laws of the United States, and (b) the defendant Brotherhood of Locomotive Firemen and Enginemen is an unincorporated association, which has its headquarters and principal place of business in the City of Cleveland, State of Ohio, and the said defendant Brotherhood of Locomotive Firemen and Enginemen is not an inhabitant of the District of Columbia but is an inhabitant of the City of Cleveland, Ohio.

2. To dismiss the action on the ground that this defendant was not properly served with process. No officer, managing or general agent, or any other agent authorized to receive service of process in the District of Columbia has been served with process in this action.

3. To dismiss the action on the ground that the subject matter and the parties are the same as the subject matter and parties in other actions brought in other district courts and now pending. In the alternative, further proceedings in this action should be stayed.

Affidavit of Glenn C. Russell

DISTRICT OF COLUMBIA, ss:

Glenn C. Russell, being duly sworn, deposes and says:

1. He is an employee of the Brotherhood of Locomotive Firemen and Enginemen, whose principal offices are in Cleveland, Ohio. Mr. Jonas A. McBride is a Vice President and national legislative representative of the said Brotherhood, and his office is at 10 Independence Avenue, S. W., Washington, D. C. Mr. McBride and the affiant are the only persons in that office.

2. For several months Mr. McBride has been absent from Washington due to severe illness and operation, and convalescence. On October 29, 1947 a gentleman called at this office with process he desired to serve on Mr. McBride. I advised him that Mr. McBride was absent from the city and he left a copy of the complaint brought by LeRoy Graham and others against the Southern Railway Company and others upon a filing cabinet in this office.

3. My position is that of clerk-stenographer to Mr. McBride. I have no other authority or duties from or with the Brotherhood of Locomotive Firemen and Enginemen. No papers in the aforesaid action were served upon me or attempted to be served upon me.

GLENN C. RUSSELL.

Affidavit of D. B. Robertson

D. B. Robertson, being duly sworn, on oath deposes and says as follows:

I am President of the Brotherhood of Locomotive Firemen and Enginemen and have continuously held that office since 1922.

The Brotherhood of Locomotive Firemen and Enginemen, (hereinafter referred to as Brotherhood), is an unincorporated association having its principal office and general headquarters in Cleveland, Ohio, where the principal affairs and business of the organization have been transacted since May 1, 1917, pursuant to the provisions of Article 1, Sec. 5, of the Brotherhood Constitution, which provisions have been continuously in force since January 1, 1917.

Headquarters Location

> "Sec. 5(a) The headquarters of the Grand Lodge, including all departments, shall be located in the City of Cleveland, Ohio."

The administrative personnel of the Brotherhood consists of a President, Assistant President, Resident Vice President, General Secretary and Treasurer, Editor and Manager of the Magazine, and a Board of Directors of five members, all of whom have their offices in the Keith Building, Cleveland, Ohio, where there is employed a staff of Grand Lodge employees numbering approximately eighty-five persons who are assigned to work in the departments of the President, General Secretary and Treasurer, Editor and Manager, and Board of Directors. The President, Assistant President, General Secretary and Treasurer, and Editor and Manager have resided in Cleveland, Ohio, since election to their respective positions; all of their time, as well as that of the employees, during business hours is devoted to the service of the Grand Lodge.

By constitutional provision the Board of Directors is required to meet at Grand Lodge headquarters in January and July of each year to hear and decide such appeals from the decisions of the President as may have been progressed to the Board under the Brotherhood Constitution, to serve as members of the Finance Committee, and to transact such other business as may properly come before the Board. Each semi-annual session of the Board usually consumes from six to eight weeks.

There is maintained and operated by the Grand Lodge at Cleveland, Ohio, a Protective Department, for members engaged in engine service, under the primary supervision and

direction of the President, who is the chief executive officer of the Brotherhood and all its departments. There are also maintained and operated at Cleveland, Ohio, under the primary supervision of the General Secretary and Treasurer, departments issuing insurance certificates to Brotherhood members who can qualify therefor, these departments being the Beneficiary Department, Mutual Insurance Department, Benevolent Department and Accident Indemnity Department. The offices of the General Secretary and Treasurer have complete facilities for the administration of the insurance departments including the processing of all applications for insurance and the adjustment of claims. By the provisions of Article 8 of the Brotherhood Constitution all contracts of insurance issued by the Brotherhood are deemed in all respects to be made under and are to be governed by and interpreted and construed in accordance with the laws of Ohio, and, hence, are Ohio contracts.

Under the supervision of the Editor and Manager of the Magazine the Brotherhood edits and publishes at Cleveland, Ohio, in the offices of the Grand Lodge, a monthly magazine for distribution to all of its members.

For the purposes of paying salaries of Grand Lodge officers and employees, and other current operating expenses, of the Grand Lodge only, there is maintained by the Grand Lodge a General Fund into which all members pay assessments. Other funds held by the Grand Lodge are national legislative and insurance funds, the latter of which are used for the purposes of defraying the expense of operating the insurance departments and the payment of claims.

Fiscal resources of the Grand Lodge, composed of securities and cash, are deposited with banks in Cleveland, Ohio, with the exception of minor sums in cash kept on deposit with The Canadian Bank of Commerce at Toronto, Ontario, in compliance with the Canadian Foreign Exchange Control Act. Disbursements for payment of bills and claims are made by checks drawn on the depository banks by the General Secretary and Treasurer from his office in Cleveland, Ohio, and transmission to creditors and beneficiaries is made normally by mail.

All books, records and accounts of the Brotherhood are kept in the Grand Lodge office in Cleveland, Ohio, by employees assigned to such duties. And correspondence with members dealing with the affairs of the Grand Lodge is conducted from the Grand Lodge office in Cleveland, Ohio, where the files relating to such matters are maintained.

The Finance Committee of the Brotherhood, composed of the President, Assistant President, General Secretary and Treasurer, and the members of the Board of Directors, has general supervision of the financial affairs of the organization and control over the investment of its funds. This Committee meets when occasion requires in the office of the Grand Lodge at Cleveland, Ohio to transact its business.

The membership of the Brotherhood is scattered throughout every state of the United States and every province of Canada. This membership is grouped into local lodges, of which there are about 960, according to the desire and efforts of the members themselves. The location of the lodges, their names, and their by-laws are determined according to the will of the members who organize them. Among the subordinate lodges are the defendants, Ocean Lodge No. 76, Norfolk, Virginia; Devotion Lodge No. 403, Portsmouth, Virginia; and Port Norfolk Lodge No. 775, Portsmouth, Virginia. Each of the subordinate lodges is within itself a separate unincorporated association. The members of each lodge by majority vote select the place and time of their meetings, elect and remove subordinate lodge officers, and prescribe the assessments payable for the operation and maintenance of the lodge without control by the Grand Lodge. Such assessments for the maintenance and operation of subordinate lodges are paid by the members directly to the financial secretary of the subordinate lodge, to be held in such depositories and to be disbursed under such conditions as the members of each subordinate lodge may decide. Subordinate lodge funds are the sole property of the lodge and are not subject to control by the Grand Lodge or by Brotherhood members generally.

Subordinate lodges are located at division points on railroads and derive their membership from railroad employees

working in adjacent areas. Ocean Lodge No. 76 is made up of employees of the Norfolk & Western Railway and the Norfolk Southern Railway. Devotion Lodge No. 403 is made up of employees of the Southern Railway, while Port Norfolk Lodge No. 775 has members employed on both the Atlantic Coast Line Railroad and Seaboard Railway. Only one member of said Lodge No. 775 is in the employ of defendant Railway and said member is not a locomotive fireman. None of said lodges, nor the aggregate of them, fairly and adequately represent the interests of the Brotherhood, the subordinate lodges or the membership. None of said lodges served or participated in the service of the notice of March 28, 1940, quoted in the complaint, nor did any of them take part in the consummation or negotiation of any agreement alleged in the complaint, nor did any of said lodges in any way participate in any activity having as its result the alleged wrongful removal of plaintiff from his assignment as a fireman with defendant railway.

Given under my hand this 30th day of April, 1947.

(Signed) D. B. Robertson.

State of Ohio,
County of Cuyahoga, ss:

I, Clarence D. Theis, a Notary Public in and for the County and State aforesaid, do hereby certify that D. B. Robertson, the person who signed the foregoing affidavit, made oath before me that the matters and things therein set forth are true.

Given under my hand and Notarial Seal this 30th day of April, 1947.

C. D. Theis, Notary Public. My commission expires June 4, 1948.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4330-47

LEROY GRAHAM et al., Plaintiffs,

vs.

SOUTHERN RAILWAY COMPANY et al, Defendants

Order Denying Motion by Defendant Brotherhood of Locomotive Firemen and Enginemen to Dismiss or Stay Further Proceedings in This Case.

This cause came on to be heard on the motions of the defendant Brotherhood of Locomotive Firemen and Enginemen to dismiss the action (a) on the ground of improper venue, (b) on the ground that defendant Brotherhood was not properly served with process, and (c) on the ground that the subject-matter and the parties are the same as the subject-matter and the parties in an action entitled *Rolax et al.* v. *Atlantic Coast Line Railroad et al.*, which action is Civil Action No. 670, in the District Court of the United States for the Eastern District of Virginia, or in the alternative to stay further proceedings in this action because of the pendency of the said action in the District Court of the United States for the Eastern District of Virginia;

And the court having considered the affidavits of Glenn C. Russell and D. B. Robertson in support of the said motion and having heard testimony and argument by counsel, in open court, and it appearing to the court that the defendant Brotherhood is doing business within the District of Columbia, that the defendant subordinate lodges which were served with process are agents of the defendant Brotherhood for that purpose, and that the defendants William Lacey and Marven M. McQuade and J. P. Reynolds, who were served with process are officers of subordinate lodges of the defendant Brotherhood and that their duties and relation to the defendant Brotherhood are such that it is reasonable to conclude that they would give notice of this action to the proper officers of the defendant Brotherhood, now, therefore,

It is ordered that each of the said motions by the defendant Brotherhood of Locomotive Firemen and Enginemen be and the same hereby are denied.

Motion of the United States for Leave to Appeal as Amicus Curiae

The United States of America hereby moves for leave to file a memorandum as amicus curiae in this case because of the public interest involved in the enforcement of a federal statute, the Railway Labor Act. The grounds for the application, the points and authorities in support thereof, and a statement of the Government's position are set forth in the attached memorandum.

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[1]

In the District Court of the United States for the District of Columbia

Civil Action No. 4330-47

LeRoy Graham et al., Plaintiffs,

vs.

Southern Railway Company et al, Defendants

Washington, D. C.,

Monday, November 10, 1947.

The above-entitled action came on for hearing on motion of plaintiffs for temporary injunction; on motion for judgment dismissing the complaint as to defendant, Seaboard Air Line Railroad Company, or, in the alternative, for an order staying all further proceedings against defendant, Seaboard Air Line Railroad Company; on motion on behalf of Brotherhood of Locomotive Firemen and Enginemen to dismiss or to stay further proceedings; on motion to quash the return of summons and to dismiss the action; and on motion of defendant, Atlantic Coast Line Railroad Company to quash and vacate the purported service of process [2] and to dismiss the bill of complaint, before the Hon. Alexander Holtzoff, Associate Justice, at 10:00 o'clock a. m.

Appearances:

On behalf of the Plaintiffs: Rauh & Levy, by Irving J. Levy, Esq.

On behalf of the Defendant, Seaboard Air Line Railroad Company: Frank J. Wideman, Esq., Washington, D. C.; W. R. C. Cocke, Esq., and James B. McDonough, Jr., Esq., Norfolk, Virginia.

On behalf of the Defendant, Southern Railway Company: Hamilton & Hamilton, by Henry L. Walker, Esq., and William B. Jones, Esq.; Sidney S. Alderman, General Counsel.

On behalf of the Defendant, Atlantic Coast Line Railroad Company: Robert R. Faulkner, Esq.

On behalf of the Defendant, Brotherhood of Locomotive Firemen and Enginemen: Schoene, Freehill, Kramer & Fanelli by Lester P. Schoene, Esq.

On behalf of the United States: Robert L. Stern, Esq.

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[45]

The Court: Let me ask you this question: Has the Southern Railway Company been admitted to do business in the District of Columbia?

Mr. Faulkner: The Atlantic Coast Line?

The Court: The Atlantic Coast Line or the Southern Railway?

Mr. Faulkner: I would say the Coast Line is doing business, under decisions of this Court as recently decided, but we have filed no consent to be sued here and we so state in the affidavit.

The Court: Of course this Court is a little different from other Federal Courts. It has the same jurisdiction that a State Court would have, as well as the same jurisdiction that a Federal Court would have elsewhere. This suit could have been brought in the State Court, could it not, in any jurisdiction in which service could be properly obtained against the defendants?

Mr. Faulkner: I don't know, if Your Honor please.

The Court: I am inclined to think so.

Mr. Faulkner: But our point is, however, it is brought in this Court, which is a Federal Court.

The Court: Well, it has dual jurisdiction. Under the District of Columbia Code this Court has jurisdiction over any corporation actually doing business in the District of Columbia.

There is a case holding that the Louisville and Nashville Railroad Company is not doing business in this jurisdiction because the Louisville and Nashville has only an office for soliciting business and not for the sale of tickets, and it doesn't run any train in the District of Columbia, but I presume there is no dispute of the fact that the Atlantic Coast Line maintains a regular ticket office here.

Mr. Faulkner: No, no ticket office. We maintain a soliciting office.

The Court: Well, the Southern Railway Company maintains a ticket office, does it not?

Mr. Walker: Yes, Your Honor, it does. The Southern doesn't challenge the fact it is doing business in the District of Columbia.

The Court: Doesn't it come down to this, whether this Court can take jurisdiction under the local statute as well as under the Federal Statute?

We will take our mid-morning recess at this time and I suggest you consider this point.

(Thereupon, a short recess was taken.)

The Court: You may proceed, Mr. Faulkner.

Mr. Faulkner: If the Court please, to clarify the record, at least in my mind, may I secure from Your Honor just what question you have now reserved in your mind? Are you satisfied if this were purely a District Court question, that is, if it lies in a District Court as a U. S. District Court, that the Court would not have jurisdiction?

The Court: The question that is in the Court's mind is whether this Court doesn't have jurisdiction under the District of Columbia Code if these defendants are doing business in the District of Columbia.

As I said before, this Court has dual jurisdiction. It has the same jurisdiction as a Federal Court and it has also approximately the same jurisdiction as a State Court would have in a number of the States, because there are no courts

in the District of Columbia corresponding to State Courts. This Court has all local jurisdiction as well as all Federal jurisdiction.

Now, then, if this suit could have been brought in a State Court (and that is the point that is bothering me) is whether it couldn't have been brought in this Court under the District of Columbia Code.

Under the District of Columbia Code this Court has jurisdiction of any corporate defendant that is doing business in the District. That is a point I would like to have you address yourself to because that is the point that is really bothering me.

Mr. Faulkner: Since Your Honor took the recess I have just spoken to counsel for the Brotherhood and they say they are prepared to answer that question, and may I let them answer that question and proceed with my remaining point?

The Court: Yes, indeed.

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The Court: I am now passing on the Southern and Atlantic Coast Line to dismiss for proper venue, and I am going to deny those motions because this Court has dual jurisdiction. It is a Federal Court, as was held in the O'Donoghue case. Under its jurisdiction as a Federal Court the venue would be improper because the defendant Southern Railway Company and the defendant Atlantic Coast Line Railroad are not inhabitants of the District of Columbia, within the purview of the Federal statute. However, this Court also has local jurisdiction and under its local jurisdiction any corporation doing business in the District of Columbia, even though they are not inhabitants of the District of Columbia under the Federal statute, are subject to suit here.

To be sure, the right sought to be enforced here is a Federal right, but there are many Federal rights that can be enforced in local courts. State Courts, for example, have jurisdiction over actions to enforce Federal rights, and when the Congress wants to exclude jurisdiction of State Courts to enforce Federal rights it is a custom expressly to

provide that the jurisdiction of Federal Courts shall be exclusive.

For example, it was held that the jurisdiction of the Federal Courts as to patent cases and as to causes of admiralty is exclusive, but ordinarily when a cause of action is a right by a Federal statute and nothing is said to the contrary, that action may be brought in the State Court to vindicate that State right. Consequently, this Court has jurisdiction under the District of Columbia Code as a local court as well as a Federal Court over this suit.

The Southern Railway Company admits that for the purpose of the District of Columbia Code it is doing business in the District of Columbia. I do not understand that that is disputed by the Atlantic Coast Line. For these reasons I deny those motions.

Are there any other preliminary motions?

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The Court: I think I will dispose of the venue matter first. I am going to deny the motion to dismiss for improper venue. I confess if there were no authority on this point I would be inclined to grant the motion because I would be inclined to hold that the Brotherhood is not doing business in the District of Columbia; the analogy to those cases which hold that a railroad company isn't doing business in the District of Columbia if it maintains an office merely for the purpose of soliciting business as distinguished, say, from maintaining a ticket office at which tickets are sold.

I have read the opinion of the Circuit Court of Appeals for the Fourth Circuit, Tunstall vs. Brotherhood, and I am constrained to the opinion that that Court ruled the other way. That Court states that the Brotherhood was operating as bargaining agent in enforcing the rights of employees and that this service did bring the Brotherhood within the Court's jurisdiction and as performing through subordinate lodges and officers of those lodges. In other words, the activities of the Brotherhood in acting through its lodges in the District of Columbia is doing business in the District of Columbia.

Another point that is made by Judge Parker is that in collecting dues in the District of Columbia it is transacting business in the District of Columbia.

I realize, of course, that a decision of the Circuit Court of Appeals of another Circuit is not binding on this Court. However, it has a persuasive influence, and while I would be inclined not to follow it if I were absolutely and firmly convinced that that decision were wrong, where I have any doubt about the matter I think it behooves me to follow the decision of the Circuit Court of Appeals of another Circuit particularly in view of the fact that the opinion by the Court is written by such an eminent jurist as Judge Parker, and the opinion is unanimous, so I am going to deny the motion to dismiss for improper venue.

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The Court: That is a question of fact after all. I don't know what the facts were in the Tunstall case. Of course, the Plasterers' case is a binding authority on me. The Tunstall case is not.

Under the Plasterers' case I have to make a finding of fact on the basis of the evidence to the effect that the officer of the local union, who was served, would in due course have probably notified the parent union of the fact he was served because of his duties and functions, and that was done apparently in the Plasterers' case on the basis of evidence presented.

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[109] Washington, D. C.,
Tuesday, November 25, 1947.

The above-entitled action came on for hearing on the defendant Brotherhood's motion to quash and to dismiss the action and on motion for preliminary injunction, pursuant to the adjournment taken on November 17, 1947, before the Hon. Alexander Holtzoff, Associate Justice, at 10:00 o'clock a. m.

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Mr. Schoene: I will call Mr. Lacey to the stand, please.

Thereupon WILLIAM MANUEL LACEY was called as a witness on behalf of the Defendant, Brotherhood, and having been first duly sworn testified as follows:

Direct examination.

By Mr. Schoene:

Q. Mr. Lacey, are you a member of the Brotherhood of Locomotive Firemen and Enginemen?

The Court: Let's first get the witness' full name.

By Mr. Schoene:

Q. Would you state your full name and address?
A. William Manuel Lacey.
Q. Are you a member of the Brotherhood of Locomotive Firemen and Enginemen?
A. I am, sir.
Q. To what local lodge do you belong?
A. 532.
Q. What is the composition of that local lodge?
A. Meaning just what?
Q. Where do the members of that lodge find employment? Where are the members of that lodge employed?
A. In the Washington Terminal Company.

The Court: May I inquire, is Mr. Lacey the gentleman who was served?

Mr. Schoene: He is one of the gentlemen who was served, yes.

The Witness: Washington Terminal Company.

By Mr. Schoene:

Q. Washington Terminal Company?
A. That is right; one lodge system.
Q. Are any of the members of your local lodge employed on the Southern Railway or the Seaboard Air Line or the Atlantic Coast Line?
A. No, sir.
Q. Does the local lodge participate in any way in the negotiation of schedule agreements relating to railroads, rates of pay, or working conditions?

A. Pertaining to our local, yes.

Q. You have a schedule agreement with the Washington Terminal, do you not?

A. That is right.

Q. Who negotiates that?

A. The General Chairman; our General Chairman is the local Chairman inasmuch as we ony have the one lodge.

Q. But he is serving then as the General Chairman as distinguished from the local Chairman: is that correct?

A. He is both. You see, we only have one lodge.

Q. He is the same man?

A. That is right.

Q. Do you know by what authority that function is vested in him?

A. He was duly elected by the members and was given authority to prosecute the contract when necessary.

Q. Are you familiar with Section 12(a) of Article 15 of the constitution of the Brotherhood?

A. No, I wouldn't be by number.

Q. I show you that and ask you to read it. Read the section to which I have referred. I want you to read it out loud.

The Court: No, no; the exhibit is in evidence.

By Mr. Schoene:

Q. Does the section that you have read clarify the question of the authority by which the General Chairman acts in negotiating the contract?

A. That is right.

Q. He acts pursuant to that section, does he?

A. That is right.

Q. Do you collect insurance payments?

A. No, sir, I do not collect them.

Q. Your function is what, in connection with the local lodge?

A. My function in the local lodge is to naturally take the minutes, who the presiding officer is, and the actions during that meeting.

The Court: What office do you hold?

The Witness: Recording Secretary, Your Honor.

By Mr. Schoene:

Q. Do you make reports to Grand Lodge?

A. No, I make no report to the Grand Lodge, so to speak, other than you see I am a party to the yearly audit and any correspondence with the Grand Lodge is generally in the way of a resolution adopted by the members, or a protest of some national movement and our lodge votes a protest for being delayed or otherwise, such as that. Other than that mine is strictly local.

Q. Is there any effect on the Washington Terminal property, any provision concerning the distribution of assignments between promotable and non-promotable firemen?

A. No.

The Court: How is that relevant to this question?

Mr. Schoene: I think, Your Honor——

The Court: I want to confine this matter strictly to the question of service, because this is a preliminary matter.

Mr. Schoene: Yes. I think, Your Honor, that it is pertinent because in the Operative Plasterers case some emphasis was put on the fact that the functions of the local officer there involved were very closely related to the subject matter of the suit. The Court there stated——

The Court: I know, but your question relates to the contents of a bargaining agreement and it is not involved in this case and I shall exclude that.

By Mr. Schoene:

Q. Have you at any time ever had occasion to participate in the handling of any question relating to the assignment of work between promotable and non-promotable firemen?

A. No.

The Court: Well, have you had occasion to handle any question relating to labor relations between members of your local and the Washington Terminal Company?

The Witness: No, Your Honor. The General Chairman takes care of that. That is the Protective Department.

By Mr. Schoene:

Q. Are there any non-promotable firemen employed in the Washington Terminal?

A. No.

Mr. Schoene: You may cross-examine.

Cross-examination.

By Mr. Levy:

Q. Mr. Lacey, does your subordinate lodge have any separate constitution or by-laws other than the constitution of the parent lodge?

A. We have what is known as a schedule, the contract working conditions in our local terrritory.

Q. But so far as the operations of your lodge business goes you do not have any separate by-laws or constitution: isn't that right?

A. That is right.

Q. And your duties are determined by the constitution of the parent Brotherhood, are they not?

A. With maybe a few exceptions that the Grand Lodge wouldn't take exception to.

Q. I am sorry; I didn't follow that; exceptions of what kind?

A. We may deviate a little due to some conditions that exist in our local territory but as you say, mostly it corresponds with the constitution.

Q. Your duties, the duties of a recording secretary of a subordinate lodge, are set forth in this constitution, are they not?

A. That is right.

Q. Under the constitution are you required to forward applications for member's insurance to the General Secretary-Treasurer?

A. I am not. I could, but I do not, because that is handled by the local organizer.

Q. Are you familiar with Section 22(d) of Article 14 of the constitution?

A. Not according——

The Court: No, Mr. Levy, I venture the suggestion—I am not going to preclude you but I don't think it is necessary because I think the constitution speaks for itself and the text of the constitution is better evidence than this witness' recollection.

Mr. Levy: Thank you.

By Mr. Levy:

Q. Mr. Lacey, at the Washington Terminal do trains of the Southern Railway come in and out of the Terminal?

A. The Southern Railway trains do come in and out, although the main line crew is cut off at Alexandria.

Q. But the actual trains come in and out of the Terminal?

A. That is right.

Q. In connection with the Atlantic Coast Line do the cars of the Atlantic Coast Line, freight and passenger cars, come in and out of the Terminal?

A. We refer to them as R. F. & P. trains.

Q. Do the trains which bear the legend "Atlantic Coast Line" right on the cars, do they come in and out of the Terminal? Have you ever seen them?

A. They are a combination. Some of them are part of the Coast Line and they have the R. F. & P. coaches in them.

Q. The R. F. & P. locomotives bring the A. C. L. cars in and out of the Terminal?

A. Yes, but as far as we are concerned the railroads terminate at Richmond.

Q. I am asking you what you see at the Washington Terminal.

A. Oh, yes.

The Court: I don't want to interfere with the questioning, but I don't see the pertinency.

The Witness: I may explain it this way: It doesn't make any difference——

The Court: No, just answer the question.

By Mr. Levy:

Q. The question is whether in the course of your duties in and around the Washington Terminal you observe regularly cars, passenger cars and freight cars, of the Atlantic Coast Line coming in and out of the Terminal.

A. Oh, yes.

Q. A great many of them?

A. Oh, yes.

Q. Is that true with respect to the cars of the Seaboard Air Line Railway Company?

A. Them cars come in, too, on the R. F. & P. trains.

The Court: The Seaboard is out of this case.

Mr. Levy: Well, Mr. Schoene asked about the Seaboard. I have no further questions.

The Court: Any redirect examination?

Mr. Schoene: I think not.

The Court: You may step down.

(Witness excused.)

Mr. Schoene: I would like to call Mr. Reynolds. Thereupon—

JAMES PRESTON REYNOLDS was called as a witness on behalf of the Defendant Brotherhood and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Schoene:

Q. Mr. Reynolds, will you state your full name, please?

A. James Preston Reynolds.

Q. Are you a member of the Brotherhood of Locomotive Firemen and Enginemen?

A. I am.

Q. To what local lodge do you belong?

A. 532.

Q. That is the Washington Terminal Lodge?

A. That is the Washington Terminal Lodge.

Q. Do you hold an official position in that lodge?

A. Financial secretary.

The Court: What position do you hold?

The Witness: Financial secretary.

The Court: Try to speak a little louder so that we can all hear you.

By Mr. Schoene:

Q. As financial secretary do you make collections of funds on behalf of the local lodge?

A. I do.

Q. Do you make collections which are transmittgd to the Grand Lodge?

A. That is right.

Q. Will you describe the form on which you make those transmissions to the Grand Lodge?

A. It would be right hard to say. It is a very good size type of ledger with the individual's names on it, and so forth.

Q. Do you receive that form from the general secretary-treasurer?

A. I do.

Q. Is it partially filled out when you get it?

A. It is.

Q. What information is shown on it when it comes to you?

A. The returns that I should return to them, what I have collected from the members.

Q. Does it show what each member owes to the Grand Lodge?

A. It does.

Q. That is shown on the form when it comes to you from the office of the general secretary-treasurer?

A. That is right.

Q. Is that correct?

A. That is right.

Q. And if you have that money in your possession you return it, do you, with that form?

A. What the form calls for I return to the general secretary and treasurer.

Q. And if you have not made some collections that are shown on the form you indicate that fact, do you, by alteration of the form?

A. That is right.

Q. Is that all that you do to the form?

A. That is all.

Q. You simply send it back with the money: is that right?

A. That is right.

Q. Is the testimony which you have given a description of your handling of all funds for the Grand Lodge?

A. That is right.

Q. Do you make any disbursements of strike benefits?

A. How do you mean?

Q. If, for example, you had the members of your lodge on strike, would you be the disbursing officer for strike benefits?

A. Yes, I would.

Q. How would you disburse the funds?

A. First I would have to get a voucher, and that comes from the recording secretary by the sanction of the lodge that he is to be paid; and if they say no then I do not pay him.

Q. Are strike benefits paid from the local lodge funds?

A. I have never seen that happen since I have held office, so I don't know how to answer that.

Q. Do you know how strike benefits are paid?

A. No.

Mr. Schoene: That is all.

Mr. Levy: I have no cross-examination.

The Court: You may step down.

* * * * * * *

[135] Ruling on Motion to Quash Service of Process

The Court: Motion to quash service of process on the defendant Brotherhood is denied. The motion is of the type frequently referred to as technical and dilatory, and the courts will be astute not to sustain such a motion in cases where it is clear that notice actually reached the defendant.

There are two provisions of the Federal Rules of Civil Procedure that are pertinent in this connection and which should receive consideration. Rule 4(d)(7) permits service on a corporation or partnership or unincorporated associa-

tion in a manner prescribed by the local law. The local law on the subject is found in the District of Columbia Code, 1940 edition, Title 13, Section 103, which permits service on foreign corporations by leaving process at the place of business of the local agent if the local agent is absent from the company's office.

The Court realizes, of course, that the Brotherhood is an unincorporated organization. Probably the reason unincorporated associations are not included in Section 103 of Title 13 is that when that section was enacted unincorporated associations were not subject to suit, but if Section 103 applies then service on Mr. Russell, who was the subordinate of the vice president of the Brotherhood, service being made on him in the vice president's absence from the office, would be sufficient.

In view of the omission, however, of unincorporated associations from Section 103, the Court will not base its decision on that section, but that section is referred to in order to show that under the laws of the District of Columbia service will be permitted by leaving the process in the office of the party served, and if that section were enacted today no doubt it would include unincorporated associations.

The Court, however, is sustaining this service on two grounds: First, as was held by the Circuit Court of Appeals for the Fourth Circuit, in an opinion written by Judge Parker, in *Tunstall* vs. *Brotherhood of Locomotive Firemen and Enginemen*, 148 Federal (2d) 403, the local unions or lodges are to be deemed as agents of the Brotherhood for the purpose of service of process, and therefore service on the local lodge is service on the Brotherhood.

It must be borne in mind that this case is particularly important because it involves the same organization as that involved in this case.

The second ground on which the service is sustained is that William Lacey, the recording secretary of the Washington local, is to be deemed a local agent of the Brotherhood, for the purpose of service on the Brotherhood. The Court is basing this conclusion on the decision of the United States Court of Appeals for the District of Columbia in the case of *Operative Plasterers, etc. Association* vs. *Case*, 93

Federal (2d) 56, at page 65, in which Mr. Justice Stephens wrote the opinion.

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[141] Ruling of the Court on Motion to Stay Proceedings

The Court: I am going to deny this motion because there is a distinction between this case and the Seaboard's situation.

I understood in the Seaboard case the other action had proceeded far enough so that all questions of service and jurisdiction had been passed, and so the action was ready to proceed on the merits. In this case, since the Brotherhood is contesting service in the other action, we do not know whether another action is pending or not. Therefore, I shall not stay the case as against the Atlantic Coast Line.

If the defendants in the other case had submitted themselves to the jurisdiction in the other case I would make the same disposition of your motion as I made as to the Seaboard Air Line, because there, as I recall it, jurisdiction and service had already been established.

Mr. Faulkner: Then you give no consideration, as I understand, Your Honor, to the fact that that suit was filed prior to this suit, and is still pending?

The Court: Which suit?

Mr. Faulkner: The suit in Richmond.

The Court: But we don't know whether it is pending because there is a motion to quash service.

Mr. Faulkner: So far as this defendant is concerned it is still pending because we have not challenged the jurisdiction of the Court.

The Court: I know, but if the motion to quash the service is sustained then you will be in position to move to dismiss because of lack of an indispensable party, because in my opinion both the railroad and the Brotherhood are indispensable parties to the adjudication of the validity——

Mr. Falkner (Interposing): But may I offer this observation? Doesn't this case go a little further? The District Judge in the same District has already overruled such a motion. Isn't it to be presumed that this motion will likewise be overruled on next Monday, December 1st?

The Court: I can make no presumption one way or the other. All I say is that I cannot hold that the Eastern District of Virginia has taken jurisdiction of this controversy when there is still pending a motion to quash service.

As I understood it, and I want to be corrected if I am wrong, in the Seaboard Air Line case, in which I granted the motion to stay, all questions of service had been passed.

Mr. Faulkner: That is right.

The Court: And the Court had retained jurisdiction over the parties.

Mr. Faulkner: That is true, but no answers had been filed.

The Court: You see in that case if the answers have been filed, the issue can be tried on the merits probably very promptly. Here we are still in the preliminary stages, and this Court still doesn't know whether the District Court of the United States for the Eastern District of Virginia will or will not take jurisdiction of the action brought by Rolax and McGowan, so I am going to deny the motion.

Mr. Faulkner: May I make this statement of the grounds in connection with your ruling on the motion to dismiss on improper venue?

In reading the record, I may not have stated my position as clearly as I should have, that is, for the Southern and the Seaboard, that this Court sitting as a District Court has no greater jurisdiction than this Court sitting as a Federal Court.

The Court: I understood the plea but I overrule it because this Court has double venue, so to speak. If I may use the vernacular, it has double-barreled venue.

* * * * * * *

[183] Ruling on Motions for Preliminary Injunction

The Court (Holtzoff, J.): This is a motion for a preliminary injunction in a class suit brought by a number of locomotive firemen employed by the Atlantic Coast Line Railroad Company and the Southern Railway Company. The suit is brought against the railroad companies and against the Brotherhood of Locomotive Firemen and Enginemen, which is the bargaining agency under the Railway

Labor Act in behalf of the locomotive firemen employed by the two railroads.

The complaint alleges that the defendants have entered into bargaining agreements by virtue of which the plaintiffs, and other members of the class, all of whom belong to the Negro race and who are euphemistically known as non-promotable firemen, are being unfairly discriminated against in a manner that did not exist under the previous hiring practices of the two railroads. Specifically it is charged that non-promotable firemen at times lose their seniority rights and sometimes even their employment when steam power is displaced by Diesel power on any run on which a non-promotable fireman is employed, and that at times a person with less seniority is hired as a helper on a Diesel engine when a Diesel engine replaces steam power.

As the Court views this action it is primarily against the Brotherhood because the complaint shows that the Brotherhood was instrumental in securing such discriminatory action on the part of the railroads.

We are dealing here with the law regulating the duties of an agent toward his principal. No one is compelled or required to undertake an agency, but one who voluntarily assumes the task owes the duty of acting in the utmost good faith toward his principal. An agent is a fiduciary. If the principal is a group of individuals, this obligation extends to each member of the group. The agent is bound to represent the interests of each member of the group fairly and with equal zeal. He may not neglect some of the members, prefer some as against others, or discriminate among them. He may not advance the interests of some, of the prejudice of others. This is implicit in the fiduciary relationship that exists between every agent and his principal, be that principal a single individual or a group of individuals.

Applying these general principles to the situation presented in this case, the Brotherhood was under no obligation to become a bargaining agent for the employees within its craft. Having sought to do so, and having been elected to that position of trust, the Brotherhood is in duty bound to represent fairly not only its own membership, but all the employees in whose behalf it has authority to bargain.

The Brotherhood must advance equally and in good faith the interests of every individual fireman whom they represent, without preference or discrimination among them. The only permissible distinctions may be those based on seniority, efficiency, reliability, aptitude and similar considerations bearing on the quality of services rendered by the employees. No line may be drawn arbitrarily on any other basis.

A bargaining agent under the National Labor Relations Act or under the Railway Labor Act is but an agent for a principal, and not an independent contractor. His principal is the entire group of employees whom the agent represents. This is made clear by Section 2 of the Railway Labor Act and Section 7 of the National Labor Relations Act which assures to employees the right "to bargain collectively through representatives of their own choosing." The important word in this connection is the word "representatives." The bargaining agent is a representative, not an independent contractor. He is clothed with all the rights of a representative, but is subject to all the fiduciary obligations of a representative.

In the last analysis, the question is whether an employee who has a good record of efficiency and who has acquired rights based on seniority by dint of long and faithful service may be deprived of his employment by the arbitrary action of the bargaining agent, who purports to act in behalf of the entire group of which the unfortunate employee is a member. It seems to the Court that the question answers itself. We are not dealing here with any of the baffling problems and complex situations arising out of race relations. This is not a matter of race distinction in social relations between man and man. This is a matter of arbitrary classification in labor relations. The problem that confronts us is simply this: May a faithful employee who has earned a place for himself by a long period of service be stripped of his means of livelihood by his own bargaining agent? To the individual immediately concerned such an eventuality would be a disaster. To permit such a tragic result would be to tolerate a grave injustice. The law does not allow an agent to act in this manner toward any member of the group which he represents.

The final question is whether a preliminary injunction should be granted. The Court is mindful of the proposition that preliminary injunctions should be granted sparingly and hardly ever if they would disturb the status quo. There are exceptions, however.

In this case we already have rulings by the Supreme Court of the United States and by the Circuit Court of Appeals for the Fourth Circuit condemning as illegal the specific practices set forth in the complaint. Consequently no doubtful question of law is involved.

In the case of *Steele* v. *Louisville and Nashville Railroad Company*, 323 U. S. 192, Mr. Chief Justice Stone condemned practices that were very similar to those of which the plaintiffs complain, and held that agreements and activities of the type described in the complaint are violations of the Railway Labor Act. Mr. Chief Justice Stone said that:

> "• • • Congress, in enacting the Railway Labor Act and authorizing a labor union, chosen by a majority of a craft, to represent the craft, did not intend to confer plenary power upon the union to sacrifice, for the benefit of its members, rights of the minority of the craft, without imposing on it any duty to protect the minority."

He further stated that "the representative is to act on behalf of all the employees which, by virtue of the statute, it undertakes to represent."

More recently the Circuit Court of Appeals for the Fourth Circuit, in the case of *Brotherhood of Locomotive Firemen and Enginemen* v. *Tunstall*, 163 Federal (2d) 289, in which Judge Parker spoke for a unanimous bench, also condemned practices of the kind here complained of. A judgment in behalf of the plaintiffs for an injunction and damages was affirmed.

The law, therefore, is clear. This circumstance, it seems to the Court, operates to render this case an exception to the rule that ordinarily preliminary injunctions which might disturb the status quo should not be granted.

It is objected, however, that the Norris-LaGuardia Act precludes the granting of the injunction. It seems to the

Court that this objection is answered by the case of *Virginian Railway Company* v. *System Federation No. 40*, 300 U. S. 515, 563. In that case the Court was confronted with a suit by a labor union against an employer to compel the latter to bargain collectively. The Supreme Court held that an application for an injunction of this type is not within the prohibitions of the Norris-LaGuardia Act. In this case we have a situation which is parallel in principle if not in fact. Here members of the craft seek an injunction to require the bargaining agent to perform its bargaining function faithfully. In the Court's opinion the Norris-LaGuardia Act does not apply. The Court is impressed also by the circumstance that although in the Steele case and in the Tunstall case, which was before the Circuit Court of Appeals on two occasions, the Norris-LaGuardia Act was apparently never even mentioned.

The Court realizes that the railroads have a public duty to perform. Their function is to run railroads, and in the performance of their obligations they may be constrained to enter into agreements with labor unions to prevent interference with the operation of the line. For this reason the Court will not grant any injunction against the railroads. The Court will, however, grant a preliminary injunction against the Brotherhood to enjoin and restrain the Brotherhood from insisting on any departure on the part of the railroads from previously existing hiring practices, if such departures will result in any discriminatory action as against any member of the group represented by the plaintiffs. The precise phraseology of the injunction to be granted will have to be determined on a settlement of the order to be made pursuant to the Court's decision.

* * * * * * *

[193] Preliminary Injunction

This cause came on to be heard on plaintiffs' motion for a preliminary injunction against the defendants Southern Railway Company, Atlantic Coast Line Railroad Company, and the Brotherhood of Locomotive Firemen and Enginemen, an unincorporated association; and, State University Railroad Company, a corporation organized and existing

under the laws of the State of North Carolina; The Cincinnati, New Orleans and Texas Pacific Railway Company, a corporation organized and existing under the laws of the State of Ohio; The Alabama Great Southern Railroad Company, a corporation organized and existing under the laws of the State of Alabama; Woodstock & Blocton Railway Company, a corporation organized and existing under the laws of the State of Alabama; New Orleans and Northeastern Railroad Company, a corporation organized and existing under the laws of the State of Louisiana; New Orleans Terminal Company, a corporation organized and existing under the laws of the State of Louisiana; Georgia Southern and Florida Railway Company, a corporation organized and existing under the laws of the State of Georgia; St. Johns River Terminal Company, a corporation organized and existing under the laws of the State of Florida; Harriman and Northeastern Railroad Company, a corporation organized and existing under the laws of the State of Tennessee; and Cincinnati, Burnside & Cumberland River Railway Company, a corporation organized and existing under the laws of the State of Kentucky, having intervened as defendants in this action; and counsel for the defendants Southern Railway Company, the Atlantic Coast Line Railroad Company and the intervening railroads having suggested to the court that if a preliminary injunction should issue against the defendant Brotherhood it should also be made to apply to restrain the said railroads, and the court, having considered the complaint, the affidavit of Benjamin F. McLaurin in support of the motion, and all the papers and proceedings heretofore had herein, and having heard argument by counsel, and having filed its opinion herein, makes the following

Findings of Fact

1. Plaintiffs are Negroes with long seniority as firemen on the lines of certain of the defendant railroads.

2. Defendant railroads and defendant Brotherhood, as representative of the craft of locomotive firemen and helpers under the Railway Labor Act, entered into agreements, including an agreement executed in Washington,

D. C. on February 18, 1941, (sometimes referred to as the Southeastern Carriers Conference Agreement) along with other southeastern carriers, which restricts the rights of these plaintiffs and other Negro firemen with respect to employment, job assignments, seniority rights and other conditions of employment on the basis of race.

3. As a result of the said agreements and in compliance with their terms, defendant railroads at the insistence of the defendant Brotherhood have displaced these plaintiffs and other Negro firemen from job assignments as locomotive firemen to which they were entitled by virtue of their seniority and assigned them to jobs which are less desirable, less remunerative or more onerous; plaintiffs and other Negro firemen have been denied rights to preferred runs and to positions as firemen or helpers on Diesel engine locomotives and other forms of non-steam power, to which they would have been entitled by virtue of the seniority rights which they acquired by their long periods of service as firemen.

4. The defendant Brotherhood is continuing and threatens to continue to insist upon the application by the defendant railroads of the terms of the aforesaid agreements to further discriminate against these plaintiffs, with respect to job assignments, to continue to deny them preferred runs on Diesel locomotives and otherwise to which their seniority entitles them, and in like manner to displace and discriminate against other Negro firemen employed by the said railroads on whose behalf these plaintiffs sue.

5. The loss of assignments as firemen and the denial of assignments as helpers on Diesel locomotives and the failure to accord to plaintiffs and other Negro firemen the runs to which their seniority rights entitle them constitute irreparable injury for which there is no adequate remedy at law.

On the basis of the foregoing findings of fact, the court makes the following

Conclusions of Law

1. This court has jurisdiction of the parties and the subject-matter, and venue is properly in this court.

2. The complaint states a cause of action cognizable by this court.

3. There are reasonable grounds to believe that plaintiffs will ultimately prevail in this action.

4. The agreement of February 18, 1941 and like agreements which discriminate against plaintiffs and other locomotive firemen by denying them their seniority rights and rights to job assignments on the basis of race are illegal under the Railway Labor Act (45 U. S. C. § 151 et seq.) and the conduct of the defendant Brotherhood in causing the provisions of those agreements to be enforced and applied by the said railroads is in violation of the fiduciary duties of the Brotherhood as bargaining representative under the said Act and irreparably injures these plaintiffs and other Negro locomotive firemen.

5. The provisions of the Norris-LaGuardia Act (29 U.S.C. §§ 101 et seq.) do not apply to this action.

6. A temporary injunction should issue so that pending the final hearing and determination of this action no further injury should be inflicted upon these plaintiffs or other Negro firemen employed by the said railroads on whose behalf plaintiffs also sue.

7. Although the court ruled at the hearing on November 25, 1947 that a temporary injunction should issue against the defendant Brotherhood but not against the defendant railroads, which may be said to have been constrained by the Brotherhood to enter into and apply the discriminatory agreements here involved, the said motion of said interveners for leave to intervene as defendants has subsequently been made and granted, and the defendant railroads and interveners have suggested and it now appears to the court that the temporary injunction prayed by the plaintiffs could not be made fully effective to protect the plaintiffs and others represented by them in the respects indicated in the court's opinion of November 25, 1947, unless the said temporary injunction should apply likewise against the defendant railroads and the intervening defendant railroads.

Order

Wherefore, on the basis of the foregoing,

It is hereby ordered, adjudged and decreed that the defendant Brotherhood of Locomotive Firemen and Enginemen, its officers, agents, employees and attorneys and all persons in active concert or participation with them, be, and they hereby are restrained and enjoined pending the determination of this action from

(a) Requiring or inducing or compelling the Southern Railway Company or the Atlantic Coast Line Railroad Company or any of the intervening defendant railroad companies to recognize or comply with the agreement between the Southeastern Carriers Conference Committee and the said Brotherhood, executed in Washington, D. C. on February 18, 1941, or with any other agreements or understandings between any of the said railroads and the said Brotherhood in so far as any such agreement or understanding requires any of the said railroads to discriminate against these plaintiffs or against other Negro firemen employed by said railroads by denying them their seniority rights to assignments hereafter made as firemen on steam locomotives or as helpers on Diesel locomotives because they are Negroes or because they are so-called "non-promotable" employees or because of any considerations other than seniority, efficiency, reliability or like considerations, and

(b) Requiring or inducing or insisting that any of the said railroads take any action with respect to the seniority rights to assignments hereafter made as firemen on steam locomotives or as helpers on Diesel locomotives by the said railroads which would alter practices and policies with respect to seniority rights to assignments as firemen on steam locomotives or as helpers on Diesel locomotives followed by such railroads prior to the enforcement of the said agreement of February 18, 1941, or of any other agreements or understandings which provide for the discrimination against Negro firemen in respect to seniority rights to job assignments.

It is further ordered, adjudged and decreed that the defendant railroad companies and the intervening defendant railroad companies,

Southern Railway Company,
Atlantic Coast Line Railroad Company,
State University Railroad Company,
The Cincinnati, New Orleans and Texas Pacific Railway Company,
The Alabama Great Southern Railroad Company,
Woodstock & Blocton Railway Company,
New Orleans and Northeastern Railroad Company,
New Orleans Terminal Company,
Georgia Southern and Florida Railway Company,
St. Johns River Terminal Company,
Harriman and Northeastern Railroad Company, and
Cincinnati, Burnside & Cumberland River Railway Company,

and each of them, their officers, agents, employees and attorneys, and all persons in active concert or participation with them, be and each of them is hereby restrained and enjoined pending the determination of this action from recognizing or complying with the agreement between the Southeastern Carriers' Conference Committee and the defendant Brotherhood, executed in Washington, D. C., on February 18, 1941, or with any other agreements or understandings between any of the said railroads and the said Brotherhood, in so far as any such agreement or understanding requires any of said railroad defendants or intervening railroad defendants to discriminate against the plaintiffs or against other Negro firemen employed by said railroads by denying them their seniority rights to assignments hereafter made as firemen on steam locomotives or as helpers on Diesel locomotives because they are Negroes or because they are so-called "non-promotable" employees or because of any considerations other than seniority, efficiency, reliability, or like considerations.

Plaintiffs shall give security in the sum of $1,000 for the payment of such costs or damages as may be incurred or suffered by defendants if they are found to have been

wrongfully enjoined or restrained by this order, such bond to be approved by the court or the clerk of the court.

This order is stayed until December 10, 1947, to enable the defendants to apply to the United States Court of Appeals of the District of Columbia for a stay pending appeal from this order.

——— ———, Justice, District Court of the United States for the District of Columbia.

Dated December 3, 1947.

(4766)

United States Court of Appeals

FOR THE

DISTRICT OF COLUMBIA CIRCUIT

No. 9716

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, APPELLANT

v.

LEROY GRAHAM, ET AL., APPELLEES

Special Appeal from the United States District Court for the District of Columbia

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Argued April 13, 1948 Decided October 26, 1948

Mr. Milton Kramer, with whom *Mr. Lester P. Schoene*, who entered an appearance, and *Messrs. Harold C. Heiss* and *Russell B. Day*, were on the brief, for appellant.

Mr. Joseph L. Rauh, Jr., with whom *Mr. Irving J. Levy*, who entered an appearance, and *Messrs. William W. Kramer* and *Henry Epstein*, were on the brief, for appellees Graham, *et al.*

Mr. Henry L. Walker for appellee Southern Railway Company. *Mr. Sidney S. Alderman* also entered an appearance for appellee Southern Railway Company.

Messrs. Robert R. Faulkner and *Thomas W. Davis* entered appearances for appellee Atlantic Coast Line Railway.

Before STEPHENS, C. J., and EDGERTON and CLARK, JJ.

STEPHENS, C. J.: This is a special appeal allowed by this court from an order of the United States District Court for the District of Columbia granting a preliminary injunction. The appellant, a defendant below, is the Brotherhood of Locomotive Firemen and Enginemen, an unincorporated association, hereafter sometimes referred to as the Brotherhood. Other defendants were subordinate Lodge No. 7 (the "Potomac" Lodge) and Lodge No. 532 (the "National Capitol" Lodge) of the Brotherhood composed principally of members residing in the District of Columbia; Marvin M. McQuade, Recording Secretary and Financial Secretary of Lodge No. 7, and William E. Lacey, Recording Secretary of Lodge No. 532, residents of the District of Columbia; the Southern Railway Company, the Seaboard Air Line Railway Company, and the Atlantic Coast Line Railway Company, interstate carriers operating along the

eastern seaboard, hereafter referred to as the carriers. Other railroad companies intervened. Neither they nor the "other defendants" mentioned above are parties to this appeal. The appellees, plaintiffs below, are 21 Negro firemen employees of the carriers. Their complaint in the District Court charged: that the Brotherhood by virtue of its constitution and practices restricts its membership to white locomotive firemen and enginemen; that its members have constituted the majority of the craft or class of locomotive firemen on most of the interstate railroads of the United States, including the defendant carriers, and that in consequence the Brotherhood has, pursuant to the provisions of the Railway Labor Act, 45 U. S. C. § 151, *et seq.* (1946)[1], continuously acted as sole bargaining agent for the entire class of locomotive firemen, including Negro firemen; that as such sole bargaining agent the Brotherhood has negotiated agreements and arrangements with the carriers, including an agreement of February 18, 1941, between the Southeastern Carriers' Conference Committee and the Brotherhood, discriminating against colored firemen and depriving them of rights and job assignments to which their seniority entitled them; that pursuant to these agreements and arrangements seniority rights to favored job assignments have been denied the appellees and other Negro firemen. The appellees sued on their own behalf and on behalf of all others similarly situated. Their complaint expressly founded the action upon the Railway Labor Act and the Constitution of the United States. The complaint sought: a determination of the appellees' rights and the rights of others similarly situated; a permanent injunction against any further discriminatory practices; an order directing restoration of jobs from which appellees and other Negro firemen had been unlawfully displaced; a permanent injunction restraining the Brotherhood from purporting to act as representative of the appellees or as representative of the class or craft of locomotive firemen under the Railway Labor Act so long as it does not fairly represent all members thereof, including the Negro firemen; damages for loss of employment and wages by reason of the discriminatory practices; and a preliminary injunction pending final hearing and determination of the cause. The appellees supplemented their complaint by a motion for a preliminary injunction restraining further discrimination and loss of job assignments pending final determination of the action. The appellant Brotherhood moved to dismiss the action upon the grounds that venue was improperly chosen, that the Brotherhood was not properly served, and that other actions in which the subject matter and parties were the same as in the instant case were pending in other district courts. The trial court denied this motion and entered an order issuing the preliminary injunction prayed for. The present appeal is from that order. In addition to urging that the court erroneously denied the motion to dismiss, the Brotherhood asserts also on the appeal that the preliminary injunction was issued in defiance of the Norris-LaGuardia Act, 29 U. S. C. § 101, *et seq.* (1946), and that it was erroneously issued also in that it altered rather than preserved the status quo existing prior to the commencement of the suit. In the view we take it is necessary to rule only upon the question of the propriety of the venue of the

[1] It is provided in Section 152: ". . . Fourth. . . . The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. . . ."

action. Further facts relating to a determination of that question are stated below.

The venue statute applicable to the United States courts generally, 28 U. S. C. § 112 (1946), provides that "no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant . . . ."[2] An unincorporated association—the Brotherhood, as above stated, is such—is an "inhabitant" only of the district in which is located its principal place of business. It was so ruled in *Sperry Products* v. *Association of American Railroads*, 132 F. (2d) 408 (C. C. A. 2d 1942), where the meaning of the word inhabitant for determination of venue for the commencement of patent infringement suits under the provisions of 28 U. S. C. § 109 (1940), was in issue in respect of the defendant American Association of Railroads, an unincorporated association.[3] Recognizing that inhabitancy should be attributed to such an association "as though it were a single jural person and not an aggregate," the court in that case, speaking through Learned Hand, Circuit Judge, said:

> . . . Whether an individual is an "inhabitant" of any place other than his home we need not inquire; the word has no better defined outlines than "domicile", or "residence"; all we need say here is that it was used to indicate some more permanent attachment than that of "a regular and established place of business"; and in the case of individuals other ties than occupational were certainly included. In the case of a corporation we may assume that it can be an "inhabitant" only of the state of its incorporation, Neirbo Co. v. Bethlehem Shipbuilding Corporation, 308 U. S. 165, 60 S. Ct. 153, 84 L. Ed. 167, 128 A. L. R. 1437; but even so, that will not serve as a test if there be several judicial districts in that state. Since a corporation can have no other activities than occupational, we are forced to choose among these; and it seems to us that we can only choose that place where its principal activities take place: its principal place of business. If so, the same test must apply to an unincorporated association with the added limitation that as to it no state of incorporation exists to disturb the test in application. . . . [132 F. (2d) at 411]

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[2] 28 U. S. C. § 112 (1946) is rephrased in 28 U. S. C. § 1391 (b), effective September 1, 1948, as follows: "A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, except as otherwise provided by law."

The Reviser's Notes to § 1391 state: "Word 'reside' was substituted for 'whereof he is an inhabitant' for clarity inasmuch as 'inhabitant' and 'resident' are synonymous. (See Ex parte Shaw, 1892, 12 S. Ct. 935, 145 U. S. 444, 36 L. Ed. 768; Standard Stoker Co., Inc. v. Lower, D. C., 1931, 46 F. 2d 678; Edgewater Realty Co. v. Tennessee Coal, Iron & Railroad Co., D. C., 1943, 49 F. Supp. 807.) Reference to 'all plaintiffs' and 'all defendants' were [sic] substituted for references to 'the plaintiff' and 'the defendant,' in view of many decisions holding that the singular terms were used in a collective sense. (See Smith v. Lyon, 1890, 10 S. Ct. 303, 133 U. S. 315, 33 L. Ed. 635; Hoge v. Jamieson, 1897, 17 S. Ct. 596, 166 U. S. 395, 41 L. Ed. 1049; and Fetzer v. Livermore, D. C., 1926, 15 F. 2d 462.)"

We think that the rephrasing in 28 U. S. C. § 1391 (b) (1948) of 28 U. S. C. § 112 (1946) makes no substantive change in respect of venue of the United States courts generally, and since the decision of the trial court in the instant case was rendered and the briefs on appeal written in terms of the venue provision as phrased in Section 112, we refer in this opinion to that phrasing rather than to the phrasing of Section 1391 (b).

[3] Section 109 provides: "In suits brought for the infringement of letters patent the district courts of the United States shall have jurisdiction, in law or in equity, in the district of which the defendant is an inhabitant, or in any district in which the defendant, whether a person, partnership, or corporation, shall have committed acts of infringement and have a regular and established place of business. . . ."

An affidavit filed in support of the Brotherhood's motion to dismiss stated that the principal place of business of the Brotherhood is Cleveland, Ohio, and the constitution of the Brotherhood which was made a part of the record of the hearing on the motion to dismiss so provides. No counter-affidavit was filed. It may therefore be taken as established—it is indeed apparently not in dispute—that the principal place of business of the brotherhood, and therefore its inhabitancy, is Cleveland, Ohio. It follows that if the Federal venue statute governs, the venue in the instant case was mischosen.

There is, however, a local statute, that is, one enacted by Congress under Article I, § 8, cl. 17, applicable to the District of Columbia alone, which provides that no action shall be brought in the United States District Court for the District of Columbia by original process against any person "who shall not be an inhabitant of, *or found within*, the District, except as otherwise specially provided." (Italics supplied) D. C. Code (1940) § 11-308. It is contended by the appellees that that statute may be looked to for support of the venue in the instant case and that it was satisfied on the facts, that is to say, that the Brotherhood may properly be said to be "found" within the District, by virtue of its having therein the office of its "national legislative representative." But we need not determine whether the Brotherhood is thus "found" within the District since, for the reasons set forth below, we think the Federal venue statute governs.

In *O'Donoghue* v. *United States*, 289 U. S. 516 (1933), the Supreme Court held that the Supreme Court of the District of Columbia and the Court of Appeals of the District of Columbia (now the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit) are constitutional courts of the United States ordained and established under Article III of the Constitution. This holding is predicated upon recognition that those courts are "courts of the United States, vested generally with the same jurisdiction as that possessed by the inferior federal courts located elsewhere in respect of the cases enumerated in § 2 of Art. III,"[4] which provides that "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, [and] the laws of the United States . . . ." The holding is based upon a recognition further that "the judicial power thus conferred is not and cannot be affected by the additional congressional legislation enacted under Article I, § 8, cl. 17, imposing upon such courts other duties, which, because that special power is limited to the District, Congress cannot impose upon inferior federal courts elsewhere. . . ."[5] It follows that legislation enacted by Congress applicable to the inferior Federal courts in the exercise of Article III power is not and cannot be affected by legislation enacted by Congress under Article I, § 8, cl. 17, and therefore that the Federal venue statute enacted by Congress for the guidance of the inferior Federal courts exercising judicial power under Article III is not and cannot be affected by a local venue statute enacted by Congress, applicable to the courts in the District of Columbia, under Article I, § 8, cl. 17. If the local statute, requiring for venue only that a

[4] 289 U. S. at 545.
[5] 289 U. S. at 546.

defendant be "found" within the District, is applied, in support of venue in the instant case, which requires the exercise of Article III power, the local statute does affect, indeed it nullifies, the Federal venue statute requiring inhabitancy for venue, the defendant Brotherhood not being an inhabitant of the District. Even in cases founded upon diversity jurisdiction only, a local statute does not affect the operation of a Federal venue statute. Thus in *Doyle* v. *Loring*, 107 F. (2d) 337 (C. C. A. 6th 1939), it was held that, as to proceedings in a United States district court, a statutory provision of the state of Tennessee considered by the Court of Appeals to be in effect a venue statute, was ineffectual to render nugatory the specific venue requirements of the general Federal venue statute, 28 U. S. C. § 112 (Supp. 1938). The court stated that "venue established by a Federal statute cannot be impaired or annulled by a State statute." (107 F. (2d) at 340) The local venue statute—enacted by Congress under Article I, § 8, cl. 17—relied upon by the appellees in the instant case, is, in its relation to the Federal venue statute, comparable to a state statute. In short, as applied to all cases which require the exercise by an inferior Federal court of the judicial power conferred by Article III, a general Federal venue statute is exclusive in its operation. It is not to be thought that Congress intended that a defendant sued in a case requiring the exercise of such power should have less protection in respect of venue when the suit is commenced in the United States District Court for the District of Columbia than he would have if the suit had been commenced in any other United States district court also exercising Article III power.

The appellees contend, however, that the instant suit may, as against the Brotherhood, be regarded as a class suit brought against the two local lodges of the Brotherhood and McQuade and Lacey as representatives within Rule 23 (a), Federal Rules of Civil Procedure, providing that "If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is (1) joint, or common, or secondary . . . ." And the appellees assert that since the two local lodges and McQuade and Lacey are inhabitants of the District, the inhabitancy requirement of the Federal venue statute, 28 U. S. C. § 112 (1946), is satisfied. The appellees rely upon *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen*, 148 F. (2d) 403 (C. C. A. 4th 1945). Therein an action against the same Brotherhood as was a defendant and is the appellant in the instant case, to restrain it and the Norfolk Southern Railway Company from enforcing, among others, the same allegedly discriminatory collective bargaining agreement as is involved in the instant case, was held to be sustainable as a class action by virtue of its having been brought against a local lodge of the Brotherhood and one Munden, the chairman of that lodge, who were sued as defendants and served. But the action was sustained as a class suit because the Court of Appeals was of the view that as a matter of fact the subordinate lodge and the individual sued and served were fairly representative of the membership of the Brotherhood. It said: "It cannot be contended with any show of

reason that Munden and the subordinate lodge, who were admittedly served, were not fairly representative of the membership of the brotherhood or that service upon them would not give adequate notice to the class sued to come in and defend . . . ." (148 F. (2d) at 406) This view of the Court of Appeals in the *Tunstall* case was warranted because the record in that case discloses that members of the local lodge which was sued and served and the chairman sued and served were employees of the Norfolk Southern Railway Company which was itself a party to the allegedly discriminatory collective bargaining agreements. They, therefore, had an interest in the outcome of the suit co-extensive with that of the Brotherhood itself. They were among the employees concerning whom the agreements were made.* But in the instant case, although it is alleged in the complaint that the two local lodges and McQuade and Lacey are truly representative of the Brotherhood and that they are sued as representatives, there is no finding to that effect, and on the record there is no basis for such a finding. It is not alleged in the complaint that the members of the local lodges were employees of the defendant carriers; and the testimony of Lacey, Recording Secretary of Lodge No. 532, shows that the members of that lodge were not such employees but were on the contrary employees of the Washington Terminal Company and were therefore not affected by the allegedly discriminatory collective bargaining agreement which was the subject of the instant action. It therefore does not appear in the instant case that the two local lodges and McQuade and Lacey had an interest in the outcome of the suit which was co-extensive with that of the Brotherhood. This is an essential element of a true class suit under Rule 23 (a), Federal Rules of Civil Procedure. See MOORE'S FEDERAL PRACTICE (1938 ed.) § 23.03, pp. 2232-2233. The author there states that the "representative must have an interest, which is co-extensive and wholly compatible with the interests of those whom he would represent." The requirement of Rule 23 (a) that the class representatives sued must be such "as will fairly insure the adequate representation of all" is but a reflection of the requirements of due process. *Cf. Hansberry* v. *Lee*, 311 U. S. 32 (1940).

It follows from the foregoing that, in view of the law as it stood at the time of the trial court's action, the motion of the appellant Brotherhood for dismissal of the instant suit for lack of proper venue should have been granted and therefore that the order issuing the preliminary injunction should not have been entered. But an addition to the Judicial Code, 28 U. S. C. § 1406 (a), effective September

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* An affidavit of Carl J. Geff, assistant president of the Brotherhood, which was filed in support of the Brotherhood's motion to dismiss in the *Tunstall* case, contained the following statement: "Affiant further says that W. M. Munden, one of the named defendants in this cause, is a local chairman of one of such local lodges, to-wit, Ocean Lodge No. 76, which has about 115 members; that said W. M. Munden is employed by the Norfolk Southern Railroad and is local chairman (which means chairman of the local grievance committee) of said local lodge for the Norfolk Southern Railroad. That said W. M. Munden is compensated for his services by said local Lodge No. 76 only, from funds collected from the members of said lodge *employed on the Norfolk Southern Railroad*. That the duties of said W. M. Munden are to represent only the Norfolk Southern members of said lodge in the handling of grievances with local officials of the Norfolk Southern Railroad, and with no other railroad officials whatever, and that his duties are limited to said business and affairs of the Norfolk Southern members of said local Lodge No. 76." (Italics supplied)

1, 1948, provides that "The district court of a district in which is filed a case laying venue in the wrong division or district shall transfer such case to any district or division in which it could have been brought." Except where vested interests have intervened an appellate court must decide a case according to the law as it exists, whether in statutory form or in the form of judicial decision, at the time of its decision rather than according to the law as it existed at the time of the decision below. *Ruppert* v. *Ruppert*, 77 U. S. App. D. C. 65, 134 F. (2d) 497 (1942). Accordingly the ruling of the trial court that venue was properly laid in the District of Columbia is held erroneous and the order issuing the preliminary injunction is reversed and the case remanded to the trial court and that court is directed to transfer the case to the northern district of Ohio in which is situated the city of Cleveland wherein, as above pointed out, the Brotherhood has its inhabitancy.

Reversed and remanded.

[fol. 80] [Stamp:] United States Court of Appeals for the District of Columbia Circuit. Filed Oct. 26, 1948. Joseph W. Stewart, Clerk

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, OCTOBER TERM, 1948

No. 9716

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, Appellant,

vs.

LEROY GRAHAM, et al., Appellees

Special Appeal from the District Court of the United States for the District of Columbia (now United States District Court for the District of Columbia).

Before: Stephens, C. J., and Edgerton and Clark, JJ.

Judgment

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia now United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be, and the same is hereby, reversed, with costs, and that the case be, and it is hereby, remanded to the said District Court with directions to transfer the case to the District Court for the Northern District of Ohio.

Per Chief Judge Stephens.

Dated October 26, 1948.

[fol. 81] Copy

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, OCTOBER TERM, 1947

No. 9716

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, Appellant,

v.

LEROY GRAHAM, et al., Appellees

Before: Groner, C. J., Stephens and Clark, JJ.

Order

This cause coming on this day for hearing on a preliminary transcript of record and on the petition of the Brotherhood of Locomotive Firemen and Engineers for stay of the preliminary injunction of the District Court herein, and it being agreed by all of counsel that said petition of the Brotherhood shall be treated as a petition for allowance of special appeal and for an order to maintain the status quo pending decision thereon,

It is Ordered by the Court that the injunction order of the District Court in this case be, and is hereby, stayed pending final action on the petition for special appeal.

The petitioner, Brotherhood, is allowed 3 days to file a statement of points on which it intends to rely and brief in support thereof. The respondents, including the railroads, are allowed 5 days thereafter within which to file answers or objections thereto.

Per Curiam.

Dated December 9, 1947.

[fol. 82] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Jan. 5, 1948. Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, JANUARY TERM, 1948

No. 9716

District Court No. —. Civil Action 4330-47

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, Petitioner,

v.

LEROY GRAHAM, et al., Respondents

Before: Stephens, Edgerton and Clark, JJ.

Order

On consideration of the petition for allowance of a special appeal from the order of Mr. Justice Holtzoff entered in this cause on December 3, 1947, in the District Court of the United States for the District of Columbia, and of petitioner's supplemental brief in support thereof, and of respondents' objections thereto, It is

Ordered by the Court that a special appeal from said order be, and it is hereby, allowed and that the stay of the injunction heretofore granted by this court be, and it is hereby, continued in effect pending final disposition of the appeal or until further order of this court in this case.

Per Curiam.

Dated: January 5, 1948.

[fol. 83] [Stamp:] United States Court of Appeals for the District of Columbia Circuit. Filed Nov. 5, 1948. Joseph W. Stewart, Clerk

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 9716

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, Appellant,

v.

LEROY GRAHAM, et al., Appellees

Designation of Record

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Appellant's Appendix.
2. Opinion.
3. Judgment.
4. Order of December 9, 1947, staying injunction order pending action on special appeal.
5. Order of January 5, 1948, allowing special appeal.
6. This designation.
7. Clerk's certificate.

Joseph L. Rauh, Jr., Attorney for Appellees.

Rauh and Levy, 1631 K Street, N. W., Washington 6, D. C.

Certificate of Service

I certify that I served copies of the foregoing Designation of Record upon Messrs. Milton Kramer, 1625 K Street, N. W., Attorney for Brotherhood of Locomotive Firemen and Enginemen; Henry L. Walker, 15th & K Streets, N. W., Attorney for Southern Railway Co., and Robert R. Faulkner, Shoreham Building, 15th and H Streets, N. W., Attorney for Atlantic Coast Line Railway, by mailing postage prepaid, to each of them this day to the above addresses

William W. Kramer.

Dated: November 5, 1948.

[fol. 84] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that the foregoing pages numbered from 1 to 83, both inclusive, constitute a true copy of the appendix to appellant's brief and the proceedings of the said Court of Appeals as designated by counsel for appellant in the case of: Brotherhood of Locomotive Firemen and Enginemen, Appellant, vs. Leroy Graham, et al., Appellees, No. 9716, October Term, 1948, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this thirtieth day of November, A. D. 1948.

Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit.
(Seal.)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 27, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is assigned for argument on Monday, October 10, 1949.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.